



City Council Chambers
39700 Civic Center Drive
Fremont, California

City Council

Gus Morrison, Mayor
Judith Zlatnik, Vice Mayor
Bob Wasserman
Bill Pease
Steve Cho

City Staff

Jan Perkins, City Manager
Harvey E. Levine, City Attorney
David Millican, Deputy City Mgr./CFO
Lynn Dantzker, Asst. City Manager
Lynn Macy, Asst. City Mgr./City Clerk
Nancy Carlson, Human Resources Director
Daren Fields, Economic Develop. Director
Dave Jensen, Chief Technology Officer
Dan Marks, City Planner
William McDonald, Fire Chief
Jack Rogers, Maint. & Rec. Svcs. Director
Suzanne Shenfil, Human Services Director
Craig Steckler, Chief of Police
Craig Whittom, Redevelopment Director
Rob Wilson, City Engineer

City Council Agenda and Report **[Redevelopment Agency of Fremont]**

General Order of Business

1. Preliminary
 - Call to Order-7:00 p.m.
 - Salute to the Flag
 - Roll Call
2. Consent Calendar
3. Ceremonial Items
4. Public Communications
5. Scheduled Items
 - Public Hearings
 - Appeals
 - Reports from Commissions, Boards and Committees
6. Report from City Attorney
7. Report from City Manager
8. Council Communications
9. Adjournment

Order of Discussion

Generally, the order of discussion after introduction of an item by the Mayor will include comments and information by staff followed by City Council questions and inquiries. The applicant, or their authorized representative, or interested citizens, may then speak on the item; each speaker may only speak once to each item. At the close of public discussion, the item will be considered by the City Council and action taken.

Consent Calendar

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address the City Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.



Addressing the Council

Any person may speak once on any item under discussion by the City Council after receiving recognition by the Mayor. Speaker cards will be available at the speaker's podium prior to and during the meeting. To address City Council, a card must be submitted to the City Clerk indicating name, address and the number of the item upon which a person wishes to speak. A handicapped podium and microphone can be reached from the fourth floor elevator exit. When addressing the City Council, please walk to the lectern located in front of the City Council. State your name. In order to ensure all persons have the opportunity to speak, a time limit will be set by the Mayor for each speaker (see instructions on speaker card). In the interest of time, each speaker may only speak once on each individual agenda item; please limit your comments to new material; do not repeat what a prior speaker has said.

Oral Communications

Any person desiring to speak on a matter which is not scheduled on this agenda may do so under the Oral Communications section of Public Communications. Please submit your speaker card to the City Clerk prior to the commencement of Oral Communications. Only those who have submitted cards prior to the beginning of Oral Communications will be permitted to speak. Please be aware the California Government Code prohibits the City Council from taking any immediate action on an item which does not appear on the agenda, unless the item meets stringent statutory requirements. The Mayor will limit the length of your presentation (see instructions on speaker card) and each speaker may only speak once on each agenda item.

To listen to a recorded message listing upcoming City Council, Planning Commission and Recreation Commission Agenda Items: Phone 494-4849

To leave a voice message for all Councilmembers and the Mayor simultaneously, dial 494-4895, then dial 5811 when prompted.

The City Council Agendas may be accessed by computer at the following Worldwide Web Address: www.ci.fremont.ca.us

Information

Copies of the Agenda and Report are available in the lobbies of the Administrative Center, 39100 Liberty Street and the Development Services Center, 39550 Liberty Street, on Friday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available at the Office of the City Clerk.

Hearing impaired earphones are available from the City Clerk 15 minutes prior to the meeting. A driver's license will be held as a deposit.

The regular meetings of the Fremont City Council are broadcast on Cable Television Channel 27.

Council meetings are *open captioned* for the deaf in the Council Chambers and *closed captioned* for home viewing.

Information about the City or items scheduled on the Agenda and Report may be referred to:

City Clerk
City of Fremont
39100 Liberty Street
Fremont, California 94538
Telephone: (510) 494-4620.

Your interest in the conduct of your City's business is appreciated.

NOTICE OF SPECIAL MEETING

DATE: Monday, July 8, 2002

TIME: 4:00 p.m.

AGENDA: Badge Pinning Ceremony for new
Fire Chief William McDonald

LOCATION: Fukaya Room
Fremont Main Library
2400 Stevenson Blvd.

This notice was delivered to the City Council, the Argus, and the San Jose Mercury News in addition to being posted in the City of Fremont Administrative Services Center and Development Services Center.

Distributed by the Office of the City Clerk, City of Fremont, (510) 494-4620.

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**NOTICE AND AGENDA OF SPECIAL MEETING
CLOSED SESSION**

**CITY COUNCIL
And
REDEVELOPMENT AGENCY
CITY OF FREMONT**

At 6:00 p.m. Tuesday, July 9, 2002, in the Fourth Floor Conference Room, 39700 Civic Center Drive, the Agency/City Council will convene a special meeting. It is anticipated the Agency/Council will immediately adjourn the meeting to a closed session to confer with and receive advice from its attorney regarding possible initiation of litigation by the City in one matter and anticipated litigation against the City in one matter, the Agency will confer with and receive advice from its attorney regarding pending litigation in one matter and granting authority to its real property negotiators, as follows:

City Council

CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION

This Closed Session is authorized by subdivision (c) of Section 54956.9 of the Government Code and will pertain to possible initiation of litigation by the City in one matter.

CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

This Closed Session is authorized by subdivision (b) of Section 54956.9 of the Government Code and will pertain to possible initiation of litigation against the City in one matter.

Redevelopment Agency

CONFERENCE WITH LEGAL COUNSEL - PENDING LITIGATION

This Closed Session is for discussion of pending litigation and is authorized by subdivision (a) of Section 54956.9 of the Government Code and will pertain to the following case:

Redevelopment Agency v. Gerald A. Rodrigues, Case No. 01-035948
(Alan Farian, tenant)

CONFERENCE WITH REAL PROPERTY NEGOTIATORS: This closed session is authorized by Government Code Section 54956.8 at the time and place stated above to confer with and grant authority regarding price and terms of payment to its real property negotiators.

APN # 501-1426-004-02 and 501-1426-005-1 approximately .257 acre parcel owned by Basir Dadajan, for property located at 37070 Fremont Boulevard, Unit# 126, Center Square Shopping Center, Fremont

The Brown Act requires the negotiators (even when not attending the meeting) to be listed in this notice. Those negotiators are:

For the Redevelopment Agency--(which will be represented at the meeting) Randy Sabado, Real Property Manager; Craig Whittom, Redevelopment Agency Director; Sandra Fox, Assistant City Attorney and Harvey Levine, City Attorney

For the owners-(will not be represented at the meeting) Basir Dadajan.

This closed session is authorized by Government Code Sections 54956.9(a), 54956.9(c) and 54956.9(b).

This Special Meeting is being called by Chairman/Mayor Morrison.

This notice was delivered to the City Council, The Argus, and The San Jose Mercury News in addition to being posted in the City of Fremont Administrative Services Center and Development Services Center.

AGENDA
FREMONT CITY COUNCIL REGULAR MEETING, JULY 9, 2002
CITY GOVERNMENT BUILDING, 7:00 P.M.

1. PRELIMINARY

- 1.1 Call to Order
- 1.2 Salute the Flag
- 1.3 Roll Call
- 1.4 Announcements by Mayor / City Manager

2. CONSENT CALENDAR

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.

- 2.1 *Motion to Waive Further Reading of Proposed Ordinances. (This permits reading the title only in lieu of reciting the entire text.)*
- 2.2 *Approval of Minutes – Regular meeting of June 25, 2002.*
- 2.3 *Second reading and adoption of an ordinance of the City of Fremont amending Title IV (Sanitation and Health), Chapter 7 (Massage Establishments, Massage Technicians, and Outcall Technicians) of the Fremont Municipal Code (Introduced June 25, 2002) (Page 17)*

RECOMMENDATION: Adopt Ordinance.

- 2.4 *Second reading and adoption of an ordinance of the City Council of the City of Fremont ordering the submission of a Measure of Incurring Bonded Indebtedness for the purpose of the acquisition, construction and completion of certain municipal improvements to the qualified voters of the City of Fremont at a General Municipal Consolidated Election to be held on November 5, 2002 (Introduced July 2, 2002) (Page 17)*

RECOMMENDATION: Adopt Ordinance.

- 2.5 *Second reading and adoption of an ordinance of the City of Fremont amending Chapter I (City Council and Mayor) of Title II (Administration and Finance) of the Fremont Municipal Code by changing the location of all Regular Meetings of the City Council (Introduced July 2, 2002) (Page 17)*

RECOMMENDATION: Adopt Ordinance.

- 2.6 *Second reading and adoption of an ordinance of the City of Fremont amending Section 2-1103 of the Chapter 1 (City Council And Mayor) of Title II (Administration and Finance) of Fremont Municipal Code, upon the approval of the Voters at the November 5, 2002 election, to increase the salaries of the Mayor and the Councilmembers (Introduced July 2, 2002) (Page 17)*

RECOMMENDATION: Adopt Ordinance.

- 2.7 *FREMONT BOULEVARD ELECTRICAL CONVERSIONS
Approval of Plans and Specifications and Award of Contract for Fremont Boulevard Electrical Service Conversions From Irvington Avenue to Blacow Road, 8289A(PWC) (Page 19)*

Contact Person:

<i>Name:</i>	<i>Jeanne Suyeishi</i>	<i>Peggy Claassen</i>
<i>Title:</i>	<i>Associate Civil Engineer</i>	<i>Senior Civil Engineer</i>
<i>Dept.:</i>	<i>DES/Engineering</i>	<i>DES/Engineering</i>
<i>Phone:</i>	<i>510-494-4728</i>	<i>510-494-4724</i>
<i>E-Mail:</i>	<i>jsuyeishi@ci.fremont.ca.us</i>	<i>pclaassen@ci.fremont.ca.us</i>

RECOMMENDATIONS:

- 1. Approve the Plans and Specifications for the Fremont Boulevard Electrical Service Conversions from Irvington Avenue to Blacow Road, 8289A(PWC)*
- 2. Accept the bid and award construction contract for Fremont Boulevard Electrical Meter Conversions from Irvington Avenue to Blacow Road, 8289A(PWC), to Besko Electric in the amount of \$26,870.00, and authorize the City Manager to execute the contract.*
- 3. Accept and appropriate \$19,920 to Fund 502 (outside sources) Project PWC8289 per service agreement reimbursement from PG&E.*

2.8 *SHORT-TERM CAPITAL NOTES*

Proposed Issuance of 2002 Capital Project Notes in a Principal Amount not to Exceed \$10,500,000 for the Construction of the New Maintenance Services Facility (Page 23)

Contact Person:

*Name: Gloria del Rosario
Title: Revenue & Treasury Manager
Dept.: Financial Services
Phone: 510-494-4789
E-Mail: gdelrosario@ci.fremont.ca.us*

RECOMMENDATIONS:

- 1. Approve proposed short-term capital note.*
- 2. Adopt resolution providing for the borrowing of funds in a principal amount not to exceed \$10,500,000 for fiscal year 2002-2003 and the issuance and sale of 2002 capital project notes.*

2.9 *PARATRANSIT CONTRACT*

Authorization for City Manager to Enter Contract with Friendly Cab Company, Inc. , for Non-ADA Paratransit Services (Page 25)

Contact Person:

<i>Name:</i>	<i>Dan Schoenholz</i>	<i>Suzanne Shenfil</i>
<i>Title:</i>	<i>Deputy Director</i>	<i>Director</i>
<i>Dept.:</i>	<i>Human Services</i>	<i>Human Services</i>
<i>Phone:</i>	<i>510-494-4848</i>	<i>510-494-4551</i>
<i>E-Mail:</i>	<i>dschoenholz@ci.fremont.ca.us</i>	<i>sshenfil@ci.fremont.ca.us</i>

RECOMMENDATION: Authorize the City Manager to enter into a contract for up to \$470,000 per year with Friendly Cab Company, Inc. for the provision of the City of Fremont's Measure B Paratransit transportation service for the period August 1, 2002 through July 31, 2003, with two additional one-year options based on satisfactory performance.

2.10 *YOUTH AND FAMILY SERVICES COUNSELING FEES*

Recommendation to Increase Counseling Fees at Youth and Family Services (Page 29)

Contact Person:

*Name: Iris Preece
Title: Administrator, Youth & Family Services
Dept.: Human Services
Phone: 510-574-2128
E-Mail: ipreece@ci.fremont.ca.us*

RECOMMENDATION: Adopt a resolution amending the Master Fee Schedule to adopt the proposed sliding scale schedule enclosed and increase the full fees for counseling services as follows: \$10 for initial assessments, \$90 for one-hour session (individual, couple or family), \$30 for 90-minute group therapy, and \$35 for 120-minute group therapy session.

2.11 LIBRARY CONTRACT

Approval of Contract Agreement Between City and Alameda County for Library Services (Page 31)

Contact Person:

*Name: Lisa Goldman
Title: Intergovernmental Relations
Manager
Dept.: City Manager's Office
Phone: 510-494-4888
E-Mail: lgoldman@ci.fremont.ca.us*

RECOMMENDATION: Authorize the City Manager to execute a contract agreement between the City and Alameda County for library services for FY 2002/03.

2.12 AUTO MALL PARKWAY & OSGOOD ROAD INTERSECTION IMPROVEMENTS

Award of contract for the Intersection Improvements on Auto Mall Parkway at Osgood Road & I-680 On-ramp (City Project No. 7932 PWC) (Page 33)

Contact Person:

<i>Name:</i>	<i>Ed Evangelista</i>	<i>Rob Wilson</i>
<i>Title:</i>	<i>Associate Transportation Engineer</i>	<i>City Engineer</i>
<i>Dept.:</i>	<i>Development & Environmental Services</i>	<i>Development & Environmental Services</i>
<i>Phone:</i>	<i>510-494-4424</i>	<i>510-494-4723</i>
<i>E-Mail:</i>	<i>eevangelista@ci.fremont.ca.us</i>	<i>rwilson@ci.fremont.ca.us</i>

RECOMMENDATIONS:

- 1. Transfer the appropriation of \$25,000 from Fund 531 (Traffic Impact Fee) of PWC 7953 to Fund 531 of PWC 7932 and \$65,000 from Fund 502 (Capitol Improvement Fund outside source) of PWC 7953 to Fund 502 of PWC 7932.*
- 2. Accept the bid and award the construction contract for the Intersection Improvements on Auto Mall Parkway at Osgood Road & I-680 on-ramp (City Project No. 7932 PWC) to Redgwick Construction Company in the amount of \$384,552.50, and authorize the City Manager to execute the*

contract.

2.13 CIP SOFTWARE DEVELOPMENT
Request for Authorization to Sign Agreement with DigiCentury for the Development of the Capital Improvement Program/Integrated Capital Assets Plan (CIP/ICAP) Software Application (Page 37)

Contact Person:

<i>Name:</i>	<i>Norm Hughes</i>	<i>Kelly McGary</i>
<i>Title:</i>	<i>Assistant City Engineer</i>	<i>Management Analyst III</i>
<i>Dept.:</i>	<i>Development and Environmental Services</i>	<i>Development and Environmental Services</i>
<i>Phone:</i>	<i>510-494-4732</i>	<i>510-494-4637</i>
<i>E-Mail:</i>	<i>nhughes@ci.fremont.ca.us</i>	<i>kmcgary@ci.fremont.ca.us</i>

RECOMMENDATION: Authorize the City Manager to execute an amendment to the existing contract for services with DigiCentury in the amount of \$99,020, for the development of a software product to produce the CIP/ICAP.

2.14 ANDRADE REZONING (PLN2002-00294)
Public Hearing (Published Notice) to Consider a Rezoning from O-S(H-I) to R-1-80(H-I) for Property Located at 1940 Curtner Road (APN 519-1584-012-00) in the Warm Springs Planning Area (PLN2002-00294) (Page 39)

Contact Person:

<i>Name:</i>	<i>Matthew Foss</i>	<i>Dan Marks</i>
<i>Title:</i>	<i>Planner I</i>	<i>Planning Manager</i>
<i>Dept.:</i>	<i>Development and Environmental Services</i>	<i>Development and Environmental Services</i>
<i>Phone:</i>	<i>510-494-4777</i>	<i>510-494-4515</i>
<i>E-Mail:</i>	<i>mfoss@ci.fremont.ca.us</i>	<i>dmarks@ci.fremont.ca.us</i>

RECOMMENDATIONS:

- 1. Hold public hearing.*
- 2. Find PLN2002-00294 is categorically exempt per CEQA Section 15301(l)(1) [Existing Facilities] because it is a parcel which has an existing single-family residence where the use will continue to be used as one single-family residence as proposed, and that there are no changes that would require further environmental analysis.*
- 3. Find PLN2002-00294 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Fundamental Goals and Land Use Chapter as enumerated within the staff report.*

4. *Waive full reading and introduce an ordinance approving PLN2002-00154 to rezone the parcel from O-S(H-I) to R-1-80(H-I) in conformance with Exhibit "A," (Rezoning Exhibit).*

2.15 **MISSION SAN JOSE COMMUNITY PARK GENERAL PLAN AMENDMENT AND REZONING (PLN2002-00226)**
Public Hearing (Published Notice) to Consider a City Initiated General Plan Amendment (GPA) of the Mission San Jose Community Park from Low Density Residential, Park, Foot Trail to Institutional Open Space, Park, Foot Trail and Rezoning from Single Family Residential (R-1-8) to Open Space (O-S) (PLN2002-00226) (Page 43)

Contact Person:

<i>Name:</i>	<i>Matthew Foss</i>	<i>Dan Marks</i>
<i>Title:</i>	<i>Planner I</i>	<i>Planning Manager</i>
<i>Dept.:</i>	<i>Development and Environmental Services</i>	<i>Development and Environmental Services</i>
<i>Phone:</i>	<i>510-494-4777</i>	<i>510-494-4515</i>
<i>E-Mail:</i>	<i>mfoss@ci.fremont.ca.us</i>	<i>dmarks@ci.fremont.ca.us</i>

RECOMMENDATIONS:

1. *Hold public hearing.*
2. *Find that PLN2002-00226 is exempt from CEQA review per Section 15301, because the project involves negligible or no expansion of an existing use.*
3. *Find PLN2002-00226 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Fundamental Goals and Land Use Chapter as enumerated within the staff report.*
4. *Adopt a resolution approving PLN2002-00226 to amend the General Plan land use designation from Low Density Residential to Institutional Open Space in conformance with Exhibit "A" (General Plan).*
5. *Waive full reading and introduce an ordinance rezoning 41403 Mission Boulevard, MSJ Community Park, from R-1-8 to Open Space in conformance with Exhibit "B" (Rezoning)*

2.16 **A PUBLIC HEARING (PUBLISHED NOTICE) TO CONSIDER PACIFIC COMMONS**
CATELLUS DEVELOPMENT AUTO MALL PARKWAY - (PLN2002-00263)
A Public Hearing (Published Notice) to Consider Pacific Commons Catellus Development Auto Mall Parkway - (Pln2002-00263) - to Consider a Planned District Major Amendment to Modify the Approved Land Use and Circulation Plans for the Planned Development Known as Pacific Commons (P-2000-214). Specifically, the Proposal Would: 1) Relocate the Proposed Southerly Extension of Boscell Road to the East and Rename it Braun Street;

2) Create an Area Between the Existing Auto Mall and Proposed Braun Street that Would be Designated as a Major Retail Area and that Would Accommodate Both Regional and Community Commercial Land Uses; 3) Designate Additional Lots Southerly of the Existing Auto Mall for Additional Auto Dealerships; 4) Allow a Reduction in the Minimum Height Requirements for the Office/R&D, Retail and Auto Sales Buildings on a Portion of the Site; and 5) Rezone Two Parcels of Land From P2000-214 (Pacific Commons) to P-88-15B (Auto Mall). Additionally, the Proposal Necessitates an Amendment to the City's Option Agreement for Property Within Pacific Commons. The Amendment Proposes to Relocate the City's "Option Parcels" from the Area Proposed for Major Retail Development to the East Side of Christy Street Within the Pacific Commons Project. An Addendum to the Adopted EIR and Supplemental EIR has been Prepared Per Section 15164 of the 2002 CEQA Guidelines. (Page 47)

Contact Person:

Name:	Joann Pavlinec	Dan Marks
Title:	Associate Planner	City Planner
Dept.:	Development & Environmental Services	Development & Environmental Services
Phone:	510-494-4450	510--494-4515
E-Mail:	jpavlinec@ci.fremont.ca.us	dmarks@ci.fremont.ca.us

RECOMMENDATIONS:

1. Hold Public Hearing
2. Approve the Addendum to Supplemental Environmental Impact Report (SEIR) for Pacific Commons Project Catellus Development Corp. SEIR PLN-2002-214, State Clearinghouse #8721715 & 96052016.
3. Determine that the proposed land uses selected are appropriate in nature and function to the General Plan designation IR-C-I.
4. Find PLN2002-0263, Finding for a Major Amendment to a "P" District, is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Land Use and Local Economy Chapters.
5. Find PLN2002-0263, as shown on Exhibit "F" (Revised Pacific Commons Master Plan 2000 Planned District Development Standards and Guidelines, June 22, 2000), fulfills the applicable requirements set forth in the Fremont Municipal Code.
6. Waive full reading and introduce an ordinance amending Planned District P-2000-214 by approving PLN2002-0263, as shown on Exhibits "A,B,F,G,H,J,K,L,M" subject to findings and conditions in Exhibit "C".
7. Approve amendment to Option Agreement as set forth in Exhibit "O".

2.17 **WOOD SMOKE EMISSION LIMITATION**
Public Hearing (Published Notice) to Consider an Ordinance of the City of Fremont, California, Amending Title IV of the Fremont Municipal Code by Adding Chapter 11 Prescribing Regulations Governing the Installation, Repair, Replacement and Use of Wood-Burning Fireplaces (Page 59)

Contact Person:

Name: Massoud Abolhoda
Title: Building and Safety Manager
Dept.: Development and Environmental Services
Phone: 510-494-4461
E-Mail: mabolhoda@ci.fremont.ca.us

RECOMMENDATIONS:

1. *Hold Public Hearing.*
2. *Waive full reading and introduce Chapter 11 to the Title IV of Fremont Municipal Code prescribing regulations governing the installation, repair, replacement and use of wood-burning fireplace.*

3. CEREMONIAL ITEMS - None

4. PUBLIC COMMUNICATIONS

- 4.1 Written Communications – None
- 4.2 Oral Communications

REDEVELOPMENT AGENCY –The Redevelopment Agency Board will convene at this time and take action on the agenda items listed on the Redevelopment Agency Agenda. See separate agenda (yellow paper).

PUBLIC FINANCING AUTHORITY – None.

CONSIDERATION OF ITEMS REMOVED FROM CONSENT CALENDAR

5. SCHEDULED ITEMS

- 5.1 **DOUBLE WOOD GOLF COURSE DEVELOPMENT AGREEMENT**
Public Hearing (Published Notice) (Referral from the Planning Commission) to Consider a Development Agreement Between the City of Fremont and Double Wood Golf Course LLC for a Golf Course to be Located Easterly of Interstate 680 and Northerly of Avalon Heights Terrace (2002-00273)
(Page 63)

Contact Person:

Name:	Dan Marks	Leonard Banda
Title:	Planning Manager	Special Assistant
Dept.:	Development & Environmental Services	Development & Environmental Services
Phone:	510-484-4515	510-494-4555
E-Mail:	dmarks@ci.fremont.ca.us	lbanda@ci.fremont.ca.us

RECOMMENDATIONS:

1. Hold public hearing.
2. Find EIR 90-31A and its addendum adequately analyze the project and that

none of the conditions described in CEQA Guidelines Section 15162 have occurred. Therefore, no further environmental document is needed for this project.

3. Find the development agreement to be consistent with the General Plan.
4. Waive full reading and introduce an ordinance approving a development agreement with Double Wood Golf Course, LLC, as set forth in Exhibit “A”.

OR

5. Waive full reading and introduce an ordinance approving the development agreement with Double Wood Golf Course, LLC, in conformance with Exhibit “A” as revised to reflect the Planning Commission’s recommendations as set forth in this report.

5.2 *TREE PRESERVATION ORDINANCE*

Public Hearing (Published Notice) to Consider Tree Preservation Ordinance Revisions, Related Zoning, Subdivision, and Penalty Revisions and Master Fee Schedule Revisions (Summary Ordinance) (Continued from June 25, 2002) (Page 69)

Contact Person:

	Roger Ravenstad	Rob Wilson
	City Landscape Architect	City Engineer
Dept.:	Development & Environmental Services	Development & Environmental Services
Phone:	510-494-4696	510-494-4723
E-Mail:	rravenstad@ci.fremont.ca.us	rwilson@ci.fremont.ca.us

RECOMMENDATIONS:

1. *Hold public hearing.*
2. *Find the Initial Study conducted has evaluated the potential for this project to cause an adverse effect—either individually or cumulatively—on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources.*
3. *Approve Draft Mitigated Negative Declaration and find it reflects the independent judgment of the City of Fremont.*
4. *Waive full reading and introduce an ordinance amending the Municipal Code to establish new tree protection regulations replacing existing ones, to amend related subdivision and zoning ordinance sections, to amend development standards relating to trees and landscaping, and to amend penalties provisions to confer tree protection ordinance enforcement power on the landscape architect and building and safety director.*
5. *Direct publication of an ordinance summary prepared by the City Attorney.*

6. *Schedule July 23, 2002 for second reading and adoption of the ordinance.*
7. *Adopt resolution amending Section II, Community Development Applications, of the Master Fee resolution in accordance with Exhibit G, to establish fees relating to administration of the tree protection ordinance.*

6. REPORT FROM CITY ATTORNEY

- 6.1 Report Out from Closed Session of Any Final Action (Page 81)

7. REPORT FROM CITY MANAGER

- 7.1 NEW CITY OF FREMONT WEBSITE: www.fremont.gov
Update on new City of Fremont website, scheduled to launch on July 15
(Page 83)

Contact Person:

Name: Glenn Fajardo
Title: Management Analyst
Dept.: City Manager's Office
Phone: 510-494-4649
E-Mail: gfajardo@ci.fremont.ca.us

RECOMMENDATION: Receive report.

- 7.2 DOUBLE WOOD GOLF COURSE OPEN SPACE EASEMENT
To Provide Direction on Open Space Easement on City-Owned Land Easterly
of Avalon Homes Development for Double Wood Golf Course (Double Wood
Golf Course PLN 2002-00273) (Page 85)

Contact Person:

Name:	Dan Marks	Len Banda
Title:	Planning Manager	Special Assistant
Dept.:	Development and Environmental Services	Development and Environmental Services
Phone:	510-494-4515	510-494-4555
E-Mail:	dmarks@ci.fremont.ca.us	lbanda@ci.fremont.ca.us

RECOMMENDATION: Authorize the City Manager to: negotiate an open space easement with Double Wood Golf Course LLC, the United States Fish and Wildlife Service (USFWS) and the Department of Fish and Game (Fish & Game), for approximately 36 acres of open space on the property described in Exhibit A, consistent with the terms and conditions set forth in this report; and execute a grant of open space easement to a third party land trust organization approved by the USFWS and Fish & Game consistent with these terms and conditions.

7.3 DRIVE-THROUGH RESTAURANT REGULATIONS
Request for Council Direction on Whether to Undertake Changes in the
Zoning Ordinance in Relation to Drive-Through Restaurants (Page 89)

Contact Person:

Name:	Dan Marks	Lynn Dantzker
Title:	City Planner	Assistant City Manager
Dept.:	Development and Environmental Services	Development and Environmental Services
Phone:	510-494-4515	510-494-4732
E-Mail:	dmarks@ci.fremont.ca.us	ldantzker@ci.fremont.ca.us

RECOMMENDATION: Direct staff to undertake preparation of revised regulations on Drive-Through Restaurants pursuant to the issues described in this report.

7.4 CABLE FRANCHISE CHANGE OF CONTROL
Consideration of Request by the Franchisee, TCI Cablevision of California, Inc., for the City's Consent to a Change of Control of the Fremont Cable Franchise from AT&T Corp to AT&T Comcast Corp; and Hearing to Consider the Franchisee's Compliance with the Fremont Cable Franchise Requirements (Page 95)

Contact Person:

Name:	Dave Millican	John Du
Title:	Deputy City Manager	Management Analyst II
Dept.:	City Manager	City Manager
Phone:	510-494-4771	510-494-4837
E-Mail:	dmillican@ci.fremont.ca.us	jdu@ci.fremont.ca.us

RECOMMENDATIONS:

1. Open hearing for comments.
2. Close hearing.
3. Consider adoption of a resolution to either consent (subject to conditions) or deny the Franchisee's request to change corporate control of the Cable Franchise Documents from AT&T Corp to AT&T Comcast Corporation, with corresponding authority to the City Manager to execute a Change of Control Agreement with the Franchisee and AT&T Comcast Corporation.
4. Consider taking action on the City Manager's report of past franchise noncompliance issues related to customer service and underpaid franchise fees, including the consideration of appropriate remedies and the potential approval of a Settlement Agreement.

7.5 UPDATE ON TRADE MISSION

Update on City of Fremont Trade Mission to Taiwan and the People's Republic of China 2002 (Page 101)

Contact Person:

Name:	Jan Perkins,	Angela Tsui
Title:	City Manager	Marketing and Communications Coordinator
Dept.:	City Manager's Office	City Manager's Office/Economic Development
Phone:	510-494-4802	510-494-4858
E-Mail:	jperkins@ci.fremont.ca.us	atsui@ci.fremont.ca.us

RECOMMENDATION: Receive and comment.

7.6 FIRE SAFETY BOND MEASURE

City of Fremont Special Municipal Consolidated Election, Tuesday, November 5, 2002 for the City Sponsored Fire Safety Bond Measure Relating to General Obligation Bonds (Page 107)

Contact Person:

Name:	Lynn Macy
Title:	Assistant City Manager/City Clerk
Dept.:	City Manager
Phone:	510-494-4805
E-Mail:	lmacy@ci.fremont.ca.us

RECOMMENDATION: If the Council adopts the Ordinance on second reading July 9, staff recommends that Council:

1. Determine if Council, in whole or part, will author a measure argument.
2. Adopt a resolution requesting the Alameda County Registrar of Voters conduct the Special Election on behalf of the City of Fremont and directing the City Attorney to prepare the Impartial Analysis for the measure.

7.7 **BALLOT LANGUAGE HILL AREA INITIATIVE**
Consider Ballot Language for Hill Area Initiative of 2002 for General Election, Tuesday November 5, 2002

Contact Person:

Name:	Harvey. Levine	Lynn. Macy
Title:	City Attorney	Assistant City Manager/City Clerk
Dept.:	City Attorney's Office	City Manager's Office
Phone:	510-494-4610	510-494-4805
E-Mail:	hlevine@ci.fremont.ca.us	lmacy@ci.fremont.ca.us

RECOMMENDATION: Council review options and give direction.

8. COUNCIL COMMUNICATIONS

8.1 Council Referrals

- A. Referral from Vice Mayor Zlatnik: Request that the Council refer to staff a request to consider giving the annual 4th of July Parade a centrally located route. The parade is attracting larger crowds and more participants every year and the streets in historic areas are narrow and congested. A central location would be safer, more convenient, and much less expensive for cost of City services. Staff consideration should also include communicating with local organizations for their input.

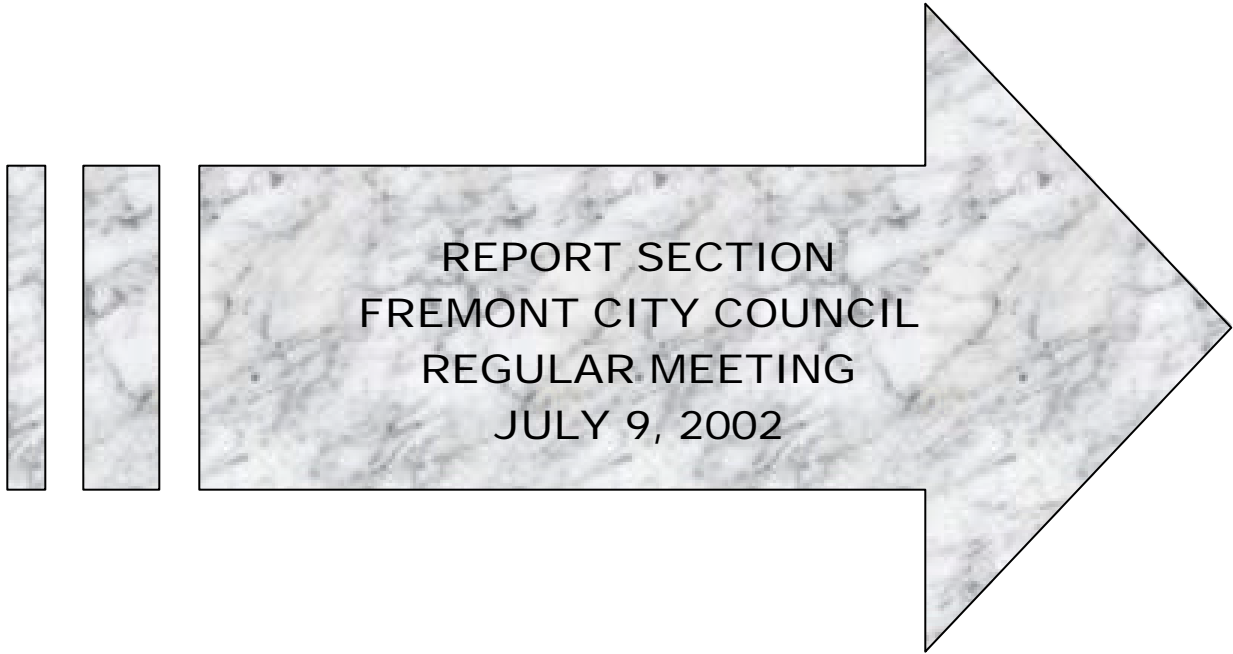
8.2 Legislation

- A. Discussion of City Position on Proposed Legislation Described in the League of California Cities Priority Focus Bulletin No. 26-2002. Council may direct staff to act on positions taken by Council.

Enclosure: League of California Cities Priority Focus Bulletin (Copies Available in the City Clerk's Office)

8.3 Oral Reports on Meetings and Events

9. ADJOURNMENT



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- *2.3 SECOND READING AND ADOPTION OF AN ORDINANCE OF THE CITY OF FREMONT AMENDING TITLE IV (SANITATION AND HEALTH), CHAPTER 7 (MASSAGE ESTABLISHMENTS, MASSAGE TECHNICIANS, AND OUTCALL TECHNICIANS) OF THE FREMONT MUNICIPAL CODE (INTRODUCED JUNE 25, 2002).**

RECOMMENDATION: Adopt Ordinance.

- *2.4 SECOND READING AND ADOPTION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FREMONT ORDERING THE SUBMISSION OF A MEASURE OF INCURRING BONDED INDEBTEDNESS FOR THE PURPOSE OF THE ACQUISITION, CONSTRUCTION AND COMPLETION OF CERTAIN MUNICIPAL IMPROVEMENTS TO THE QUALIFIED VOTERS OF THE CITY OF FREMONT AT A GENERAL MUNICIPAL CONSOLIDATED ELECTION TO BE HELD ON NOVEMBER 5, 2002 (INTRODUCED JULY 2, 2002).**

RECOMMENDATION: Adopt Ordinance.

- *2.5 SECOND READING AND ADOPTION OF AN ORDINANCE OF THE CITY OF FREMONT AMENDING CHAPTER I (CITY COUNCIL AND MAYOR) OF TITLE II (ADMINISTRATION AND FINANCE) OF THE FREMONT MUNICIPAL CODE BY CHANGING THE LOCATION OF ALL REGULAR MEETINGS OF THE CITY COUNCIL (INTRODUCED JULY 2, 2002).**

RECOMMENDATION: Adopt Ordinance.

- *2.6 SECOND READING AND ADOPTION OF AN ORDINANCE OF THE CITY OF FREMONT AMENDING SECTION 2-1103 OF THE CHAPTER 1 (CITY COUNCIL AND MAYOR) OF TITLE II (ADMINISTRATION AND FINANCE) OF FREMONT MUNICIPAL CODE, UPON THE APPROVAL OF THE VOTERS AT THE NOVEMBER 5, 2002 ELECTION, TO INCREASE THE SALARIES OF THE MAYOR AND THE COUNCILMEMBERS (INTRODUCED JULY 2, 2002).**

RECOMMENDATION: Adopt Ordinance.

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***2.7 FREMONT BOULEVARD ELECTRICAL CONVERSIONS**

Approval of Plans and Specifications and Award of Contract for Fremont Boulevard Electrical Service Conversions From Irvington Avenue to Blacow Road, 8289A(PWC)

Contact Person:

Name:	Jeanne Suyeishi	Peggy Claassen
Title:	Associate Civil Engineer	Senior Civil Engineer
Dept.:	DES/Engineering	DES/Engineering
Phone:	510-494-4728	510-494-4724
E-Mail:	jsuyeishi@ci.fremont.ca.us	pclaassen@ci.fremont.ca.us

Executive Summary: The purpose of this report is to approve the plans and specifications and award the contract for the Fremont Boulevard Electrical Service Conversions from Irvington Avenue to Blacow Road, 8289A(PWC). The service conversions are being done in conjunction with the Utility Underground District No. 32, currently under construction.

BACKGROUND: The Five-Year Utility Underground Program adopted by the City Council on September 28, 1999 included a project to underground the existing overhead utility lines on Fremont Boulevard between Irvington Avenue and Blacow Road. On past underground projects, property owners were responsible for funding and constructing on-site work. In 1997, voters passed a Constitutional Amendment (Article XIID, Section 6), more commonly known as Proposition 218. This amendment requires local governments to obtain a majority of voter approval before imposing fees upon property owners. For this project, property owners were given an opportunity to protest the imposition of the on-site work fees, referred to as the Utility Relocation Fees. The majority of the owners protested and the City was precluded from imposing the Utility Relocation Fees upon the property owners.

On July 24, 2001, an ordinance was introduced to establish this project as Utility Underground District No. 32. The City Council directed PG&E to use Rule 20A funds to pay on-site connection costs for the underground work for 100 feet of each parcel's lateral service and for each individual property owner's electric meter conversion cost, up to the maximum allowable of \$1,500 per meter conversion. The City Council also directed staff to proceed with a design project for the on-site improvements (electrical service conversions) under 8289(PWC). On September 4, 2001, the City Council adopted Utility Underground District No. 32. The ordinance established a pole removal date of September 2002.

In May 2002, construction began on Utility Underground District No. 32. Due to the delay in the start of the project, staff agreed to a new pole removal date of December 2002 which will accommodate the schedule for the street widening project. In order to meet the pole removal date, the meters need to be converted in advance of this date.

An agreement with PG&E has been executed for the reimbursement of costs up to \$1,500 for each meter conversion. Staff will request reimbursement following the award of this contract.

Bid Results: Bids for the Fremont Boulevard Electric Service Conversions from Irvington Avenue to Blacow Road, were opened on June 25, 2002 at 2:00 p.m. The bidders with their respective bid amounts are as follows:

Bidder***Bid Amount***

1. Besko Electric	\$26,870
2. Republic Electric	\$41,400
3. HR Electric	\$41,946*
Engineer's Estimate	\$50,000

*Corrected Bid Total

The low monetary bidder for the project, Besko Electric, is a responsible bidder with experience in this type of work and its bid is responsive since all bid documents are in order.

Project Costs and Funding: An estimate of project costs for Fremont Boulevard Electric Service Conversions based on the low bid submitted by Besko Electric is as follows:

Preliminary Engineering, Design & Administration	\$ 6,000
Construction Contract	26,870
Construction Engineering, Surveying, Administration & Inspection	<u>5,000</u>
Total	\$37,870

The estimated total project costs include contingencies.

Funding for the project is as follows:

PG&E Rule 20A Reimbursement, Fund 502		\$ 19,920
PWC8289, Fund 132	Gas Tax 2106 (Staff Costs)	46,574
PWC8289, Fund 502	Capital Improvement Outside Sources	<u>302,470</u>
	(PG&E Rule 20A Funds)	

Estimated Available Funding Total:	\$368,964
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Based on current estimates, there are sufficient funds available for this project.

Environmental Review: This project is categorically exempt under Section 15302 of the California Environmental Quality Act.

ENCLOSURE: Location Map

RECOMMENDATIONS:

1. Approve the Plans and Specifications for the Fremont Boulevard Electrical Service Conversions from Irvington Avenue to Blacow Road, 8289A(PWC)

2. Accept the bid and award construction contract for Fremont Boulevard Electrical Meter Conversions from Irvington Avenue to Blacow Road, 8289A(PWC), to Besko Electric in the amount of \$26,870, and authorize the City Manager to execute the contract.
3. Accept and appropriate \$19,920 to Fund 502 (outside sources) Project PWC8289 per service agreement reimbursement from PG&E.

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***2.8 SHORT-TERM CAPITAL NOTES**

Proposed Issuance of 2002 Capital Project Notes in a Principal Amount not to Exceed \$10,500,000 for the Construction of the New Maintenance Services Facility

Contact Person:

Name: Gloria del Rosario
Title: Revenue & Treasury Manager
Dept.: Financial Services
Phone: 510-494-4789
E-Mail: gdelrosario@ci.fremont.ca.us

Executive Summary: The purpose of this report is to recommend City Council approval of the issuance of a six-month short-term note to provide interim funding for the construction of the new maintenance services facility in anticipation of the issuance of certificates of participation (COP's).

BACKGROUND: Staff plans to consolidate the permanent financing of the Maintenance Center and Fire Station 11 to reduce interest costs, costs of issuance, remarketing fees, credit review costs and trustee/fiscal agent fees. Although the project costs have been determined for the Maintenance Center, Engineering staff is still working on the bid for Fire Station #11. The Capital Improvement Fund 501 (Fund 501) provides interim funding for the construction costs of the Maintenance Center.

The total projected cost for the Maintenance Center is \$24,777,457, which includes construction and soft costs. The City Council awarded the bid contract for the Maintenance Center on April 2, 2002, however, as noted above the bids for Fire Station #11 will not be presented to the City Council until sometime in the fall. Because of the timing gap between the awarding of the bids, the certificates of participation will be issued at the end of this year or beginning of next year when exact project costs are known. In the meantime, continued interim funding would reduce the cash position of Fund 501, and result in loss of interest income. The average cash outlay for maintenance center construction before COP's are issued is projected to be \$1.3 million per month. To date, the total advances to the project by Fund 501 exceed \$2 million.

Staff has been working with the City's financial advisor to review the advantage of issuing short-term capital notes to provide temporary funding and relieve Fund 501 of the burden of advancing cash for the Maintenance Center. These are the results of the analysis:

- **Projected savings:** Short-term interest rates are at a historically low point, resulting in lower borrowing costs. The current short-term interest yields on comparable issues range from 1.60%-1.70%. The investment yield on the City's portfolio is approximately 2% higher than the current borrowing interest costs which makes it less expensive to borrow than use the City's cash. The difference between the borrowing costs and investment income can net an interest savings of approximately \$65,000 by issuing a \$10,500,000 six-month capital note. Savings on trustee fee and credit analysis fee, which are charged per issue, could amount to \$5,000 per year for the entire life of the issue by consolidating the financing.
- **Size of issue:** Larger issues tend to be more economical than smaller issues due to the fixed costs and fee minimums. In general, \$10,000,000 or greater is the preferred size. The credit enhancement

provider has a threshold of minimum fee that they have to earn for each issue. With a large issue they can afford to lower the fee percentage and earn the required revenue. Because the estimated cost of Fire Station #11 as contained in the CIP/ICAP budget is only \$3.9 million, it is estimated that the fee could be .10% to .15% higher if a stand-alone financing is done. The estimated additional cost to the City is \$4,000 annually for a separate Fire Station #11 issue.

- **Preserve the cash balance of Fund 501:** Fund 501 is currently providing the cash requirements of the Maintenance Center construction. The current cash balance of Fund 501 cannot sustain the estimated \$1.3 million monthly, projected funding for the next six months, which may require interfund loans to meet the additional cash requirements. With the interim financing, the advances by Fund 501 will be repaid early and loss of interest income for six months of approximately \$175,000 ($3.50\% \times \$10,500,000$) can be prevented. Interim funding requirements will be drawn from the proceeds of the proposed capital notes and cash on hand can be used for other high priority projects that cannot be financed.

Short-Term Capital Project Notes: The proposed issue is \$10,500,000 plus cost of issuance, due on February 1, 2003. Proposed date of competitive sale is July 18, 2002. The notes will be repaid from the proceeds of certificates of participation.

In the past, the City has issued two short-term capital notes to temporarily fund the acquisition and renovation of 39550 Liberty St. (1990), and the acquisition of 39100 Liberty St. and 3300 Capitol Avenue, the purchase of Fire Station #11 site, and the future city hall site on State Street (2001). Both notes were repaid from proceeds of variable certificates of participation.

Staff proposes to engage the services of Kelling, Northcross & Nobriga as financial advisor and Quint & Thimmig as bond counsel. Being a short issue, the City will act as its own paying agent.

ENCLOSURES:

- Resolution
- Preliminary Official Statement

RECOMMENDATIONS:

1. Approve proposed short-term capital note.
2. Adopt resolution providing for the borrowing of funds in a principal amount not to exceed \$10,500,000 for fiscal year 2002-2003 and the issuance and sale of 2002 capital project notes.

***2.9 PARATRANSIT CONTRACT**

Authorization for City Manager to Enter Contract with Friendly Cab Company, Inc. , for Non-ADA Paratransit Services

Contact Person:

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Title:	Deputy Director	Director
Dept.:	Human Services	Human Services
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Executive Summary: Staff issued a Request for Proposals to transportation firms for the delivery of City-based paratransit services. After review of the two proposals received, staff recommends that Council authorize the City Manager to enter into a contract with Friendly Cab Company, Inc. to deliver paratransit services.

BACKGROUND: For many years, the City of Fremont has operated a paratransit program designed to supplement and complement the Americans with Disabilities Act (ADA)-mandated services provided by East Bay Paratransit (a consortium of BART and AC Transit). Funding for the program has been provided through “Measure B”, a countywide sales tax designated for transportation projects. For the past several years, the City received approximately \$150,000 annually for non-ADA paratransit services. The City’s program included a limited voucher program that provided subsidized sedan and lift-equipped van rides to eligible users, and a “Van Club” program that organized subsidized group outings for seniors facing isolation.

In November 2000, Alameda County voters approved the extension of Measure B. The “new” Measure B included an increase in funding for City-based paratransit services. Based on current sales tax projections, the City will receive approximately \$712,000 for non-ADA paratransit services in FY 02/03.

Staff conducted a series of focus groups in early 2002 to gather public input regarding community paratransit needs. Based on input received, staff developed a plan for FY 02/03 that will increase the size and scope of the voucher program to provide a more effective supplemental service to East Bay Paratransit. The plan also includes expansion of the Van Club program and a new group shuttle service.

The plan envisions that \$470,000 of the City’s FY 02/03 allocation, plus fares from passengers, would be dedicated to a contract with a transportation vendor for individual and group rides. Based on input from the community regarding the need for high levels of customer service to operate a successful paratransit service, the plan also allocates \$95,000 for customer service staff, including current outreach workers who organize group trips for isolated seniors. Approximately \$25,000 is set aside for marketing efforts regarding both the expanded City service and services available from East Bay Paratransit under the ADA. Marketing efforts (several of which are already underway) include:

- Development of brochures and other materials
- Presentations to groups of seniors and people with disabilities, and to organizations serving these groups
- Providing program materials in other languages (Spanish, Farsi, Chinese, and Russian)
- Articles in the Sterling Times (the City's newspaper for seniors), the City's community newsletter, and local media (including ethnic newspapers)
- Posting application and program information materials on-line
- Utilizing bilingual, bicultural outreach workers to provide information to various ethnic communities

The plan calls for dedication of remaining Measure B funds to administration (\$106,800, or 15% of the total), materials and supplies, and a small reserve to cushion against potential reductions in Measure B sales tax revenues.

The plan estimated that with new Measure B funding, the City could provide approximately 8,000 individual trips and 10,000 group trips during FY 02/03.

Council authorized submittal of the plan to the Alameda County Transportation Improvement Authority (ACTIA) in April 2002. In April and May 2002, the Human Services Department issued a Request for Proposals (RFP) from transportation companies to provide individual and group trip services in FY 02/03. Two proposals were received: one from A-Paratransit, based in Hayward, California, and one from Friendly Cab Company, Inc. ("Friendly") based in Oakland, California. A committee of City staff, the Social Services Manager from the City of Hayward, and a consumer representative rated the proposals on the companies' qualifications and experience, operations and maintenance programs, quality of safety and driver training programs, feedback from references, and cost.

A-Paratransit offered the lowest-cost service sedan and minivan service (\$32-\$35/hour to \$47/hour proposed by Friendly). However, Friendly offered lower-cost service for group trips (\$47/hour compared to \$60/hour proposed by A-Paratransit). On all criteria other than cost, Friendly was rated highest by the evaluation committee. Overall, Friendly was the top selection of the committee.

It should be noted that because the prices submitted by the vendors are higher than what was estimated in the City's approved plan, staff now estimates that the City can provide between 5,000 and 7,000 individual trips, depending on variables such as trip length, number of trips requiring wheelchair-equipped vehicles, and down time of vehicles between scheduled trips.

It should also be noted that the proposed contract begins August 1, one month after the start of the fiscal year. For July 2002, existing contracts with paratransit vendors are being utilized to provide services.

Staff recommends that Council authorize the City Manager to enter into a contract for \$470,000 with Friendly for paratransit services for the period August 1, 2002 through July 31, 2003 with two additional one-year options based on satisfactory performance. Staff intends to evaluate performance through a customer survey near the end of the first year, a monitoring of vehicle/driver safety and satisfactory performance related to the fiscal and administrative reporting requirements of the program, and also through formation of a consumer committee that will provide input to staff.

ENCLOSURE: None.

RECOMMENDATION: Authorize the City Manager to enter into a contract for up to \$470,000 per year with Friendly Cab Company, Inc. for the provision of the City of Fremont's Measure B Paratransit transportation service for the period August 1, 2002 through July 31, 2003, with two additional one-year options based on satisfactory performance.

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***2.10 YOUTH AND FAMILY SERVICES COUNSELING FEES**

Recommendation to Increase Counseling Fees at Youth and Family Services

Contact Person:

Name: Iris Preece
Title: Administrator, Youth & Family
Services
Dept.: Human Services
Phone: 510-574-2128
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Executive Summary: It is recommended that the City Council adopt a resolution amending the Master Fee Schedule to increase the full fees for various counseling services at Youth and Family Services and adjust the sliding scale schedule that the program uses to lower the fees paid directly by clients from low-income households.

BACKGROUND: Youth & Family Services (YFS), a division of the Human Services Department, has for over 25 years offered Fremont residents family, individual, and group counseling services to help improve family relationships in time of stress or crisis with special attention to teen-related issues. The counseling is available to families who are coping with divorce, job loss, alcohol and/or drug abuse, or a child's problems at school such as truancy. Mental health professionals holding marriage and family counseling credential or who are clinical social workers provide these counseling services.

Services provided through YFS are paid for through a combination of City general fund support, grants, and client fees, as well as through health insurance reimbursements when clients have appropriate health coverage. The program assures that services are affordable by using a sliding scale schedule that is based on HUD guidelines for Very Low, Low, and Moderate Income levels to reduce fees. The fee is completely waived only in instances where a client has an extraordinary financial problem.

YFS has been using the current sliding scale schedule for counseling fees since 1998. It is based on a full fee of \$85 for a one-hour session and a low of \$6 per session. It uses HUD's 1998 report of local area median income levels to reduce fees over 13 steps. Generally, clients coming in for the first time currently pay a fee of \$5 for an initial assessment. This fee is low enough that it does not act as a barrier for clients who are not sure whether counseling will help. During the initial assessment the program collects information about health insurance coverage, household size and annual income to determine what fees, if any, the client will be expected to pay.

After a review of program costs and the fees charged by local non-profit agencies, staff is recommending that Council set a fee of \$10 for a one-hour initial assessment for individuals and families and at the rates shown below for group counseling:

	<i>Full Fee</i>	<i>Lowest Fee</i>
One-hour session (Individual, couple or family)	\$90	\$10
Group Therapy for 90 minutes	\$30	\$ 5
Group Therapy for 120 minutes	\$35	\$ 5

The recommended sliding scale reduces the fee by a set percentage of the full fee rounded to the nearest \$5. It is based on HUD guidelines for Very Low, Low and Moderate income levels for the Bay Area. Also, the sliding scale can be updated each year when HUD issues the annual report of the median income levels for the area. The chart below shows how the schedule works for a one-hour session for a family of four.

1-hour Therapy Session	Percent of Median Income	Family of 4 Annual Inome	Percent of Fee	Fee to be Paid
Very Low income	40%	\$ 29,800	10%	\$10
	50%	\$ 37,250	15%	\$15
Low Income	55%	\$ 40,975	20%	\$20
	60%	\$ 44,700	25%	\$25
	65%	\$ 48,425	30%	\$30
	70%	\$ 52,150	35%	\$35
	80%	\$ 59,600	40%	\$40
Median Income	90%	\$ 67,050	50%	\$45
	100%	\$ 74,500	60%	\$50
Moderate Income	110%	\$ 81,950	70%	\$60
	120%	\$ 89,400	80%	\$70
	130%	\$ 96,850	90%	\$80
	140%	\$104,300	100%	\$90

ENCLOSURE: Counseling fees schedule examples based on median income for family of four.

RECOMMENDATION: Adopt a resolution amending the Master Fee Schedule to adopt the proposed sliding scale schedule enclosed and increase the full fees for counseling services as follows: \$10 for initial assessments, \$90 for one-hour session (individual, couple or family), \$30 for 90-minute group therapy, and \$35 for 120-minute group therapy session.

***2.11 LIBRARY CONTRACT**

Approval of Contract Agreement Between City and Alameda County for Library Services

Contact Person:

Name: Lisa Goldman
Title: Intergovernmental Relations
Manager
Dept.: City Manager's Office
Phone: 510-494-4888
E-Mail: lgoldman@ci.fremont.ca.us

Executive Summary: The City pays for library hours at the Fremont Main Library and the Centerville, Irvington, and Niles branch libraries. For Fiscal Year 2002/03, the City-funded hours will cost \$737,000, a 4% increase over the FY 2001/02 amount. Staff recommends Council authorize the City Manager to execute a contract agreement between the City and Alameda County for library hours at the Fremont libraries.

BACKGROUND: The City has long funded additional hours at the Fremont Main Library. In Fiscal Year 2000/01, the Council also chose to fund additional hours at the Centerville, Irvington, and Niles branch libraries.

This fiscal year, the Council continued its commitment by funding the existing eight hours at the Fremont Main Library, seven hours at the Centerville Library, eight hours at the Irvington Library, and five hours at the Niles Library. The total cost of these hours is \$737,000, and this money was included in the City's FY 2002/03 Adopted Operating Budget. The County also continued its commitment to the Fremont libraries by providing funding for 43 hours at the Main Library, 14 hours at the Centerville Library, six hours at the Irvington Library, and four hours at the Niles Library.

ENCLOSURE: None.

RECOMMENDATION: Authorize the City Manager to execute a contract agreement between the City and Alameda County for library services for FY 2002/03.

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***2.12 AUTO MALL PARKWAY & OSGOOD ROAD INTERSECTION IMPROVEMENTS**
Award of contract for the Intersection Improvements on Auto Mall Parkway at Osgood Road & I-680 On-ramp (City Project No. 7932 PWC)

Contact Person:

Name:	Ed Evangelista	Rob Wilson
Title:	Associate Transportation Engineer	City Engineer
Dept.:	Development & Environmental Services	Development & Environmental Services
Phone:	510-494-4424	510-494-4723
E-Mail:	eevangelista@ci.fremont.ca.us	rwilson@ci.fremont.ca.us

Executive Summary: The purpose of this report is to award the contract to the lowest responsible bidder, Redgwick Construction Company for the Intersection Improvements on Auto Mall Parkway at Osgood Road & I-680 on-ramp (City Project No. 7932 PWC).

BACKGROUND: The City Council allocated funds from the Capital Improvement Program for the intersection improvements on Auto Mall Parkway at Osgood Road and I-680 on-ramps. The improvements will improve the level of service at the intersection based on existing and projected buildout traffic volumes. The improvements include the construction of a second left turn lane for the eastbound, northbound and westbound approaches; construction of an additional northbound lane on Osgood Road; signing and striping modification; and signal modification. The improvements on Auto Mall will also provide a second eastbound lane to connect to the new on-ramp lane to southbound I-680.

Bid Results: The bidders with their respective bid amounts are as follows:

<i>Bidder</i>	<i>Bid Amount</i>
Redgwick Construction Company	\$384,552.50
Granite Construction Company	\$408,226.00 *
Engineer's Estimate	\$380,000.00

*Corrected Bid

The low monetary bidder for the project, Redgwick Construction Company, is a responsible bidder that has satisfactorily completed similar projects in Fremont and its bid is responsive since all bid documents are in order.

Project Cost and Funding: The following is a summary of the estimated total project cost:

Design & Project Administration by City (Estimate)	\$30,000.00
Design by Consultant	\$40,965.00
Construction Contract (Low Bid)	\$384,552.50
Republic Electric: Turn-on assistance (Estimate)	\$2,000.00
Construction Administration & Inspection (Estimate)	\$20,000.00
TOTAL PROJECT COST	\$477,517.50

Existing funding for the project is as follows:

Fund 502 – Capital Improvement (Outside Source)	\$131,750.00
Fund 531 – Traffic Impact Fee	\$259,234.86
TOTAL FUNDS AVAILABLE	\$390,984.86

Additional funding: Based on current project estimates, there is an estimated funding shortage of \$86,532.86. Prior to advertising this project, the City Council was informed on May 7, 2002 about the anticipated funding shortage on this project. The funding shortage is due to the following reasons:

- A PWC account and project scope was established in 1989. In 1989, before the establishment of the Traffic Impact Fee (TIF) program, the City accumulated funds from developer contributions until there were enough funds in the PWC to build the project. A project budget was developed in 1998, and TIF funds were appropriated in the Capital Improvement Program (CIP) for the project. Since 1998, continuing construction of developments in the area have delayed the City project and altered the original project scope.
- The initial cost for the installation of energy saving Light Emitting Diode (LED) light fixture for all replaced vehicle and pedestrian signal heads is more than the traditional incandescent light fixture. Red LED signals use about 90% less and green LED signal heads use about 75% less energy than incandescent signal heads. The approximate additional cost to install an LED light fixture versus an incandescent light is \$150 per vehicle light and \$200 per pedestrian light. The use of LEDs increased the construction cost by approximately \$11,000.
- The original scope of the project was expanded to include additional work such as the installation of a curb ramp and extension of sidewalk at the northeast corner of the intersection; installation of conduit and interconnect to the traffic signal at Auto Mall/Southbound I-680 on-ramp; the removal of existing and replacement of street lights along Auto Mall Parkway; and the replacement of an outdated controller cabinet and assembly. These additional items of work increased the construction cost by approximately \$40,000.
- The replacement of existing traffic signal loops with new signal loops that can better detect bicycles also increase the construction cost by approximately \$5,000.
- A portion of the project is located within Caltrans' right-of-way. Caltrans requires that all improvements within their right-of-way meet their design standards. Additional staff time was spent to prepare a Fact Sheet (Exceptions to Mandatory Design Standards) for Caltrans approval since the proposed 11' lane widths on Auto Mall did not meet their minimum design standard of 12'. Since

Caltrans approved the Fact Sheet, additional roadway widening was avoided along Auto Mall Parkway. There was an increase in staff cost (approximately \$8,000) to meet and prepare the Fact Sheet for Caltrans approval.

Source of Additional Funding: There are sufficient funds available in PWC 7953 “Traffic Signal at Various Locations”. Staff recommends the transfer of appropriation of funds from PWC 7953 to PWC 7932 to cover the funding shortfall. Since the traffic signal work accounts for approximately one third of the total project cost, fund transfer from PWC 7953 is appropriate.

Environmental Impact: This project is categorically exempt under Section 15301 of the California Environmental Quality Act.

ENCLOSURE: Location Map (Enclosure A)

RECOMMENDATIONS:

1. Transfer the appropriation of \$25,000 from Fund 531 (Traffic Impact Fee) of PWC 7953 to Fund 531 of PWC 7932 and \$65,000 from Fund 502 (Capitol Improvement Fund outside source) of PWC 7953 to Fund 502 of PWC 7932.
2. Accept the bid and award the construction contract for the Intersection Improvements on Auto Mall Parkway at Osgood Road & I-680 on-ramp (City Project No. 7932 PWC) to Redgwick Construction Company in the amount of \$384,552.50, and authorize the City Manager to execute the contract.

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***2.13 CIP SOFTWARE DEVELOPMENT**

Request for Authorization to Sign Agreement with DigiCentury for the Development of the Capital Improvement Program/Integrated Capital Assets Plan (CIP/ICAP) Software Application

Contact Person:

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Executive Summary: During the process to develop the FY2001-FY2006 Capital Improvement Program/Integrated Capital Assets Plan (CIP/ICAP), the City acquired the professional services of DigiCentury to develop a software application that automated the process to produce the CIP/ICAP document. The product that culminated from the initial contract enabled staff to produce the CIP/ICAP successfully. In an effort to decrease the quantity of staff time spent on data collection and processing for the FY2003 – FY2008 CIP/ICAP, to increase the functionality of the database, enhance the capabilities of the database and incorporate the entire CIP/ICAP process into the product, staff recommends amending the contract with DigiCentury by \$99,200 for an overall contract value of \$151,680.

BACKGROUND: On May 2, 2001, the City entered into contract for the amount of \$37,500 with DigiCentury to develop the Capital Improvement Program database. Digicentury performed services under that contract between May of 2001 through the production of the formal document in January 2002. Staff administratively increased the original contract by \$14,980 in June of 2002 to begin the process to scope the effort and potential contract to significantly improve the functionality and design of the database. The current scope of services will produce a product that will allow staff to better manage all phases of the CIP/ICAP process including project submittals, cost estimating, prioritization, and project management. Examples of the types of enhancements and additional functionality include: converting the database from Microsoft Access to SQL server, creating a product that is completely web based, automating the process to develop and maintain project estimates electronically, providing the capability to store historical project information, and automating the process to generate interim reports for staff and the City Council.

Consultant Selection Process: DigiCentury developed the software to produce the FY2001-FY2006 document. The purpose of this project is to build upon the existing custom database, and further enhance its capabilities and duration of use. Based on work performed in the first phase of the CIP/ICAP software development project, staff determined that it is in the best interest of the City for the same consultant to perform the services required to build upon and significantly expand functionality that will produce an improved product, enable staff to better manage data, provide a seamless interface for customers, and reduce staff time required to prepare documents throughout the duration of the effort to develop the CIP/ICAP.

Funding: This project is proposed to be funded entirely by Fund 501 (General Fund) PWC 8535 which has a sufficient unencumbered balance.

ENCLOSURE: None

RECOMMENDATION: Authorize the City Manager to execute an amendment to the existing contract for services with DigiCentury in the amount of \$99,020, for the development of a software product to produce the CIP/ICAP.

***2.14 ANDRADE REZONING (PLN2002-00294)**

Public Hearing (Published Notice) to Consider a Rezoning from O-S(H-I) to R-1-80(H-I) for Property Located at 1940 Curtner Road (APN 519-1584-012-00) in the Warm Springs Planning Area (PLN2002-00294)

Contact Person:

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Executive Summary: To consider a Rezoning from Open Space (Hillside Combining District) to R-1-80 (Hillside Combining District) for consistency with the underlying General Plan designation, and to allow the applicant to enlarge or replace the existing single-family structure in the future. The proposed Rezoning is consistent with the existing and current use of the subject property as a single-family residence.

BACKGROUND: According to the property owner, the residence on the lot has been occupied and used as a single-family residence since 1931. The parcel was part of a several hundred acre family farm in operation until the 1950's. Recently, the property owner learned that the parcel was designated as Institutional Open Space on the General Plan map after being denied approval of improvements to the residence.

The property's General Plan designation was changed from Very Low Density Residential (0.5-1.5 DU/AC) to Institutional Open Space as part of the Citywide General Plan Update in 1991. Subsequently, in 1993, the parcel was rezoned from Agricultural to Open Space (Hillside Combining District Overlay) to be consistent with the Institutional Open Space general plan designation.

On June 27, 2002, the Planning Commission found that the subject property was inadvertently designated Institutional Open Space and should be designated Very Low Density Residential. The Planning Commission directed staff to correct this graphical error, and also recommended approval of the Rezoning portion of the project to the City Council. One Commissioner excused herself from participation due to a conflict of interest presented by owning property within 300 feet of the project site.

Project Analysis: The applicant is requesting rezoning of the subject property from O-S(H-I), Open Space (Hillside Combining District Overlay), to R-1-80(H-I), R-1-80 Single-Family Residence District (Hillside Combining District Overlay). The R-1-80 rezoning of the parcel is consistent with the Planning Commission's Finding to change the General Plan designation of the subject property back to Very Low Density Residential (0.5-1.5 DU/AC).

Currently, the O-S(H-I) zoning district does allow some residential development, depending on the Open Space General Plan designation of the parcel. In 1993, the parcel was rezoned from Agricultural to

Open Space (Hillside Combining District Overlay) as part of the Citywide rezoning effort to make the zoning of parcels consistent with the 1990 Citywide General Plan Amendment. In this case, a general plan graphic error of Institutional Open Space for the parcel in question caused it to be rezoned to O-S(H-I).

As the Commission has found that the parcel should have been General Plan designated as Very Low Density Residential (0.5-1.5 DU/AC), it is inappropriate to retain the O-S(H-I) zoning designation of the parcel in question. Staff recommends the parcel in question be rezoned to R-1-80(H-I), consistent with the General Plan and the present residential use of the lot.

The R-1-80 standards are summarized below:

R-1-80 Residential District		
<i>Minimum Lot Dimensions</i>	<i>Standard</i>	<i>Andrade Property (actual est.)</i>
Min Lot Size	80,000 Square Feet	29,185 Square Feet
Min Lot Depth	100 Feet	220 Feet (avg.)
Min Lot Width	150 Feet	95 Feet (at front yard setback line)
<i>Yard Setbacks</i>	<i>Standard</i>	<i>Andrade Residence (actual est.)</i>
Front Yard	40 Feet	25 Feet (from front of residence to front lot line)
Rear Yard	50 Feet	115 Feet (from rear of residence to rear lot line)
Side Yard	Min. 20 Feet; both sides min. 45 Feet	25 Feet and 40 Feet; both sides total 45 Feet.

If the subject property were rezoned to R-1-80(H-I), future development would have to comply with the above standards as well as the Hillside Combining District Overlay policies. Although this rezoning would deem the property's lot and its structures legal nonconforming with respect to the lot's dimensions and size and the setback of structures, staff believes the R-1-80(H-I) zoning would be appropriate for the lot. A site plan analysis conducted by staff found that, even with the R-1-80 setback requirements, the building footprint for this lot would be at least 4,113.5 square feet of floor area. Additionally, a one-story addition may also encroach to within 10 feet of the rear lot line, given that the addition does not occupy more than 30 percent (or approximately 2,250 square feet) of the required rear yard area, which is 50 feet from the rear lot line in this case. In total, there would be sufficient buildable area if the property were rezoned to R-1-80 without the need of a variance. A variance would only be needed if the applicant wished to construct an addition within the required setback area, which may be justified if found warranted by the Zoning Administrator.

General Plan Conformance: Under Chapter 12 [Administering the General Plan] of the General Plan, the Planning Commission is authorized to execute a finding for consistency when land use diagrams are not clear. It states that, "*Since the General Plan is general in nature, and the meaning of the text and land use diagrams are not always clear, differences in interpretation are bound to arise when applying policies to specific actions.*" On such occasions, the General Plan provides that the Planning Commission should be requested to clarify such inconsistencies. The Planning Commission directed

staff to correct the graphical error on the General Plan map to change its designation from Institutional Open Space to Very Low Density Residential (0.5-1.5 DU/AC), reverting to its designation previous to the 1990 Citywide General Plan Amendment. The proposed Rezoning to R-1-80(H-I) is consistent with the underlying General Plan Designation of Very Low Density Residential; specifically Policy LU 1.1 which states that “residential use are the primarily allowed use in a residentially designated area.” Rezoning the property to Single Family Residential (R-1-80) will help to ensure that the residential use remains.

Zoning Regulations: Should the parcel be rezoned to R-1-80(H-I), it would have to comply with the R-1-80 residential zoning district requirements as well as the “Development Policy for Hill Area” as adopted by Council on March 27, 1990. It appears that only the front yard setback of the existing residence is not in compliance with the R-1-80 standards. The south section of the detached workshop/garage may also not be in compliance with its required side yard setback from the property line. Overall, most of the existing residence and detached workshop/garage are within the required setbacks as set forth in the R-1-80 zoning district, as previously mentioned in the “Project Analysis” section of this report.

Environmental Analysis: This project is categorically exempt per CEQA Section 15301(l)(1) [Existing Facilities] because it is a parcel which has an existing single-family residence where the use will continue to be used as one single-family residence, except that the addition of a secondary dwelling unit (granny unit) is allowed, as permitted by State law, which is also exempt under CEQA. The parcel cannot be subdivided, nor can additional dwelling units be added to the parcel with the proposed R-1-80(H-I) zoning district.

Response from Agencies and Organizations: No response has been received at the time of report writing.

ENCLOSURE: Exhibit “A” Zoning Exhibit.

RECOMMENDATIONS:

1. Hold public hearing.
2. Find PLN2002-00294 is categorically exempt per CEQA Section 15301(l)(1) [Existing Facilities] because it is a parcel which has an existing single-family residence where the use will continue to be used as one single-family residence as proposed, and that there are no changes that would require further environmental analysis.
3. Find PLN2002-00294 is in conformance with the relevant provisions contained in the City’s existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan’s Fundamental Goals and Land Use Chapter as enumerated within the staff report.
4. Waive full reading and introduce an ordinance approving PLN2002-00154 to rezone the parcel from O-S(H-I) to R-1-80(H-I) in conformance with Exhibit “A,” (Rezoning Exhibit).

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***2.15 MISSION SAN JOSE COMMUNITY PARK GENERAL PLAN AMENDMENT AND REZONING (PLN2002-00226**

Public Hearing (Published Notice) to Consider a City Initiated General Plan Amendment (GPA) of the Mission San Jose Community Park from Low Density Residential, Park, Foot Trail to Institutional Open Space, Park, Foot Trail and Rezoning from Single Family Residential (R-1-8) to Open Space (O-S) (PLN2002-00226)

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Executive Summary: This project is a City initiated General Plan Amendment (GPA) of the Mission San Jose Community Park from Low Density Residential, Park and Foot Trail to Institutional Open Space, Park and Foot Trail, and a Rezoning from Single Family Residential (R-1-8) to Open Space (O-S). No change in use is proposed, and no new structures are proposed. Fremont's Maintenance and Recreation Services (MARS) wishes to bring this park into zoning and General Plan conformance as with other parks throughout Fremont. The park is currently in operation.

BACKGROUND: The City Council previously approved an equal-land exchange between the City and the Fremont Unified School District on June 27, 2000 (PLN2000-00322), in which the City and School District exchanged 18,889 square feet (0.433 acres), respectively. This land exchange, and associated Lot Line Adjustment, was undertaken as part of a larger park renovation, including the construction of two new tennis courts. The current proposal is being undertaken by the City's Maintenance and Recreation Services Department as a precursor to future Capital Improvement Projects; however, no further work is proposed at this time.

The Planning Commission recommended approval of this project to the City Council at their April 25, 2002 hearing.

Project Analysis:

- **General Plan Conformance:** The existing General Plan land use designation for the project site is Low Density Residential. The City is proposing to change this designation to Institutional Open Space. The project is consistent with the proposed General Plan land use designation for the project site because it is seeking to conserve land committed to open space uses, including parks and foot trails. The following General Plan Goals, Objectives and Policies are applicable to the proposed project:

Fundamental Goal F-2: An harmonious blend of the natural and built environments. This General Plan amendment and rezoning are being initiated to preserve the existing blend of

park/open space proximate to residential uses, which place high value and demand on such uses and facilities.

Fundamental Goal F-3: A cityscape with an open feeling. Again, this project is being initiated to preserve the already existing open feeling provided by the park.

Fundamental Goal F-8: A diversity of residential, recreational, cultural, employment and shopping opportunities. The existing park enriches the surrounding residential neighborhood, as well as the adjacent school use (Mission San Jose High School). This project will in part help to preserve this existing diversity.

Fundamental Goal F-12: The availability of parks, recreational facilities and opportunities. The General Plan amendment will limit the scope of potential future development other than parks/open space, thereby preserving the future supply of parks, recreational facilities and opportunities in this area.

Land Use Goal LU-4: Conservation of the City’s open space resources. The General Plan amendment will bring the site into conformance with policies LU-4.3 and LU-4.5 (Implementation 1); including limiting development on lands designated Institutional Open Space, and the periodic update of lands used for City parks to Institutional Open Space, respectively.

- **Zoning Regulations:** The current use as a park in an R-1 zone is permitted through a conditional use permit per Section 8-2603(f) of the Fremont Municipal Code (FMC). After the proposed General Plan amendment and rezoning to Institutional Open Space, the public park will be a principal permitted use under Section 8-21713.3(a)(2). No new structures or uses are proposed, so there is no analysis with regards to setbacks, height limits, etc. Any new proposals will be evaluated against the criteria of the Open Space zoning district.

The proposed rezoning from R-1-8 (Single Family Residence District) to O-S (Institutional Open Space) will implement the proposed General Plan land use goals regarding the designation and use of Institutional Open Space lands.

- **Open Space/Landscaping:** This proposal is being initiated by the City of Fremont in order to achieve consistency between use of City Parks and their zoning. In addition, the proposal will strictly limit the potential future uses of the site to similar open-space uses, allowing the City to help ensure the future availability of this very important amenity.

Environmental Analysis: This project is Categorically Exempt from CEQA under Section 15301, Existing Facilities; as this project “involves negligible or no expansion of an existing use.” Any future project proposals at this site will be required to be evaluated under CEQA for potential impacts.

Response from Agencies and Organizations: This project was submitted to the Alameda County Congestion Management Agency (ACCMA) on March 22nd, 2002 for review to determine if implementation of the proposal would create an impact on the regional transportation network. The

ACCMA responded with a letter dated March 27, 2002 that, because the project did not generate over 100 p.m. peak hour trips above baseline, the project is exempt from their land use analysis.

ENCLOSURES:

- Exhibit “A”: General Plan
- Exhibit “B”: Zoning

RECOMMENDATIONS:

1. Hold public hearing.
2. Find that PLN2002-00226 is exempt from CEQA review per Section 15301, because the project involves negligible or no expansion of an existing use.
3. Find PLN2002-00226 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Fundamental Goals and Land Use Chapter as enumerated within the staff report.
4. Adopt a resolution approving PLN2002-00226 to amend the General Plan land use designation from Low Density Residential to Institutional Open Space in conformance with Exhibit “A” (General Plan).
5. Waive full reading and introduce an ordinance rezoning 41403 Mission Boulevard, MSJ Community Park, from R-1-8 to Open Space in conformance with Exhibit “B” (Rezoning).

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***2.16 A PUBLIC HEARING (PUBLISHED NOTICE) TO CONSIDER PACIFIC COMMONS CATELLUS DEVELOPMENT AUTO MALL PARKWAY - (PLN2002-00263)**

A Public Hearing (Published Notice) to Consider Pacific Commons Catellus Development Auto Mall Parkway - (Pln2002-00263) - to Consider a Planned District Major Amendment to Modify the Approved Land Use and Circulation Plans for the Planned Development Known as Pacific Commons (P-2000-214). Specifically, the Proposal Would: 1) Relocate the Proposed Southerly Extension of Boscell Road to the East and Rename it Braun Street; 2) Create an Area Between the Existing Auto Mall and Proposed Braun Street that Would be Designated a as a Major Retail Area and that Would Accommodate Both Regional and Community Commercial Land Uses; 3) Designate Additional Lots Southerly of the Existing Auto Mall for Additional Auto Dealerships; 4) Allow a Reduction in the Minimum Height Requirements for the Office/R&D, Retail and Auto Sales Buildings on a Portion of the Site; and 5) Rezone Two Parcels of Land From P2000-214 (Pacific Commons) to P-88-15B (Auto Mall). Additionally, the Proposal Necessitates an Amendment to the City's Option Agreement for Property Within Pacific Commons. The Amendment Proposes to Relocate the City's "Option Parcels" from the Area Proposed for Major Retail Development to the East Side of Christy Street Within the Pacific Commons Project. An Addendum to the Adopted EIR and Supplemental EIR has been Prepared Per Section 15164 of the 2002 CEQA Guidelines.

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Executive Summary: The requested changes to the Pacific Commons Planned District would allow for a stand-alone major retail center, expansion of the auto mall and a reduction of required minimum heights for a limited area of the project site. The applicant is also proposing to rezone two parcels from the Pacific Commons Planned District to the Auto Mall Planned District.

The amount of retail space proposed is consistent with the amount allowed under the existing Planned District and Development Agreement and sufficient retail entitlement remains for adequate retail uses as part of mixed use projects along Pacific Commons Boulevard and other Activity Centers. For the Major Retail Area, the future site plan, the architecture for major buildings, and the architecture for the first smaller building would be subject to approval by the Planning Commission; staff would approve architecture for the remainder of the smaller buildings in the Major Retail Area, with discretion to refer smaller buildings (less than 25,000 square feet) to the Planning Commission for approval. Goals, objectives and some general design guidelines for the Major Retail Area are also recommended.

The Planning Commission reviewed and discussed the components of this major amendment proposal at its June 13, 2002 meeting and gave direction to staff and the applicant. On June 27, 2002, the Planning

Commission held a Public Hearing and unanimously (7-0-0) recommended approval of the Planned District Major Amendment, with revisions.

In addition to acting on the Pacific Commons Planned District Major Amendment, the City Council is also requested to approve an amendment to the Pacific Commons Option Agreement as described below.

PREVIOUS ACTION(S)/BACKGROUND:

On August 27, 1996, the Planning Commission recommended the City Council approve a mixed-use industrial development and a retail "power center" on approximately 840 acres. The major land uses proposed at that time included:

- A 30 acre "power center" (excluding the Auto Mall) to accommodate high volume retailers with a plaza with restaurants clustered around it (located closer to I-880 than the currently proposed retail site);
- A mix of light industrial, research and development and warehouse uses occupying approximately 505 acres;
- A combination of warehouses and light industrial uses that would occupy about 136 acres;
- A City business park, private recreational area (a 9 hole golf course was discussed as a possibility) and potential wetland area totaling about 155 acres;
- A fire station on about 1 acre;
- Streets.

The 1996 project was planned to have approximately 8.3 million square feet of office, warehouse and commercial space in one and two story buildings. In addition to the project area, a fifty-five acre parcel at the westerly terminus of Stevenson Boulevard was proposed for preservation as a wetlands area (53 acres) and a municipal facility (2 acres).

On September 10, 1996, The City Council certified a Supplemental EIR for the project. On September 10 and 17, 1996, the City Council approved the General Plan Amendment, Planned District, Development Agreement, Vesting Tentative Map and preliminary grading plan for the project.

Resource Agency Approval: Conditions of the City Council's 1996 approval of the project required the developer to obtain approvals and permits from Federal, State and regional public agencies, including the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, California State Department of Fish and Game and the Regional Water Quality Control Board. In July of 1998, the City joined Catellus as a co-applicant in seeking those agencies' approvals. By September 9, 1999, the City and Catellus obtained the permits and/or approvals from those agencies. Conditions of approval by the resource agencies included the preservation and restoration of seasonal wetlands and associated plans totaling 390 acres on site; development of approximately 53 acres of the Stevenson Boulevard parcel (owned by Catellus and located at the westerly terminus of Stevenson Boulevard) as a wetlands/upland preserve area; donation of 20 acres of nearby lands to the Don Edwards San Francisco Bay Wildlife Refuge (the Onorato property); restoration and donation of an 840 acre open space easement for California tiger salamander habitat in Santa Clara County; filling and realigning a portion of the N-1 line traversing the Catellus property (note: this line was constructed by Catellus several years back to drain their property - no storm

waters are received from lands easterly of Interstate 880) to connect the project wetlands preserve area with the existing Refuge seasonal wetlands on a 255 acre parcel formerly known as the Caruff parcel; and commitment to maintain the donated seasonal wetlands on a 255 acre parcel of the existing refuge, in perpetuity.

Project Evolution: Because of the reduction of the developable land within the project area and the change in the market since the 1996 Council approval, staff and the Catellus team began extensive discussions in July 1999 regarding needed project changes. In October 1999, a conceptual land use plan was presented to a joint study session of the City Council, Planning Commission and Economic Development Advisory Commission for comment and direction. Additional comments were received in subsequent study sessions. Comments received by the Commissions and City Council were used in refining the project.

The subsequent project was no longer a suburban office park/shopping center as approved in 1996. The intent of the subsequent project plan, the Pacific Commons Master Plan 2000, was to provide:

- Streets that are walkable, pedestrian friendly and tree-lined;
- Clear and convenient connections to the many transportation alternatives linked to the site;
- Buildings that address the streets and make pedestrian connections from the front door to the street and open space network;
- Community-serving retail facilities that are within convenient walking distance;
- Distinctive landscape features and amenities that create a unified and appealing place;
- Commons and people places of various sizes, character and scale that are linked together and provide opportunities for repose, relaxation and passive recreation;
- A four mile recreational pedestrian/bicycle loop trail from the proposed train station, along the edge of the Wetland Preserve and around the site;
- A new City recreational area that will integrate with the proposed pedestrian/bicycle loop trail and train station;
- Site and architectural solutions that integrate energy and resource efficiency, and environmental constraints and opportunities, like wind, sun, soils, bio-swales and wetland buffers into the design of each project.

In response to this direction Pacific Commons Planned District, a mixed-use business center and wetlands preserve on approximately 822 acres, was proposed in spring 2000. The Design Guidelines and Development Standards for this Planned District (P-2000-0214), the heart of the plan, were adopted by the City Council on May 9, 2000.

Planning Commission Recommendation: On June 27, 2002, the Planning Commission held a Public Hearing and unanimously (7-0-0) recommended approval of the Planned District Major Amendment, with the following revisions:

1. In addition to those items listed in Condition of Approval #3, a conceptual building elevation for all buildings in the Major Retail Area would be required with the submittal for Planning Commission Approval of the Major Retail Area site plan.

Staff recommended that buildings 50,000 square feet or greater be subject to Planning Commission Approval. The Planning Commission recommended the following revision:

2. Proposals for buildings 25,000 square feet or larger and the first building under 100,000 square feet regardless of size would be subject to Planning Commission approval. Proposals for buildings less than 25,000 square feet would be subject to architectural approval by planning staff through the Development Organization Review. Staff would have discretion to refer any building under 25,000 square feet to the Planning Commission for architectural review.

Current Proposal - Major Amendment to P-2000-0214: The current proposal is located within the Pacific Commons Planned District (P-2000-0214) which established an approximately 300 acre business park located westerly of Interstate Route 880, between Auto Mall Parkway and Fremont Boulevard/Cushing Parkway in the Industrial Planning Area.

Summary: The general proposal includes modification of the approved land uses and circulation plans for Pacific Commons (P-2000-214). Specifically, the proposal would:

1. Relocate the proposed southerly extension of Boscell Road to the east and rename it Braun Street;
2. Create an area between the existing Auto Mall and proposed Braun Street that would be designated as a major retail area and that would accommodate both regional and community commercial land uses;
3. Designate additional lots southerly of the existing Auto Mall for additional auto dealerships; and,
4. Allow a reduction in the minimum height requirements for the office/R&D buildings located on a portion of the site.
5. A boundary change between the Pacific Commons and Auto Mall PDs. Parcel C of PM 7671 and Parcel A of PM 7100 will be rezoned from P-2000-214 to be included in the Auto Mall Planned District, P-88-15B.

Additionally, the proposal necessitates an amendment to the City's Option Agreement for property within Pacific Commons. The City and Catellus have agreed to relocate the Option Agreement parcels to property on the east of Christy Street as described further below.

Finally, a revised subdivision map will be required to be approved following approval of the revisions to the Planned District.

Each of the elements of the PD modification is described below in more detail.

1. *Relocation of Boscell Road (renamed Braun Street) to the east:* This proposed modification within the Planned District P-2000-214 facilitates enlarging the area adjacent to the Auto Mall east of Cushing Parkway to a +/-27.5 acre site to accommodate high-volume retail sales, accompanying required parking, and periphery supporting retail uses.

"High Volume Retail," uses, as defined in the General Plan, commonly have relatively large floor areas, do a very high sales volume, and generally sell bulky or large quantity goods. These types of uses usually require easy auto access and visibility from major transportation corridors.

Although this change is shown in and is part of the modification of the Planned District, the change in street location and name will be implemented as part of a follow-on subdivision tract map revision.

2. *Creation of a new land use area between the existing Auto Mall and proposed Braun Street, designated as Major Retail Area:* The proposal to establish a stand-alone major retail center was not contemplated in the most recent vision for the Planned District, although it had been part of earlier concepts. It represents a departure from the current vision in that retail uses were expected to be more integrated into the office park as part of mixed use projects or as part of smaller activity centers or as part of the hotel/conference center. The current request is not an increase in the 8.3 million total of entitled square footage for Pacific Commons, nor would it represent an increase in the amount of retail space (330,000 square feet) entitled under the Pacific Commons Development Agreement. The location of all retail space was not fully defined in the Planned District or earlier plans. This proposal would locate 270,000 square feet of the entitled retail space in the proposed Major Retail Area. The remainder of the entitled retail space would be located along Pacific Commons Boulevard, and West Activity Center. If the total retail square footage demand for Pacific Commons Boulevard (primarily at the Central Commons Activity Center) and West Activity Center does ultimately exceed the 60,000 square feet remaining of the 330,000 square feet of retail entitlement, Catellus would propose (subject to applicable City process) to transfer some of the 687,000 square foot entitlement from the East Activity Center (the Hotel/BCC/Office/Retail site) to the Central Commons or West Activity Centers.

The applicant is proposing the following as permitted uses in Major Retail Area:

- Apparel and accessory stores²;
- Auto and home supply stores²;
- Bicycle, camera, lawn mower, leather goods, business machine repair shops²;
- Business services, except establishments engaged in renting or leasing machinery, tools and other equipment²;
- Candy, nut and confectionery stores²;
- Furniture and home furnishings and equipment²;
- Gasoline service stations^{2,3};
- General merchandise²;
- Hardware²;
- High-volume retail sales in combination with wholesale sales;
- Home improvement centers¹;
- Miscellaneous retail² except used merchandise stores, non-store retailers, fuel and ice dealers², adult bookstores^{1,3}, firearms dealers^{1,2,3,4} and head shops¹;
- Paint, glass and wallpaper²;
- Personal computer and software sales;
- Retail sales in conjunction with wholesale activities;
- Beauty and barber shops²;
- Eating places without alcoholic beverages¹ and eating places with beer and wine¹;
- Finance, insurance and real estate²;
- Laundry, cleaning and garment services, except power and industrial launderers²

- Shoe repair, shoeshine and hat cleaning shops²
- Travel agencies and bureaus²;
- Printing, publishing and allied industries²;
- Tax return preparation service²;

The following uses would require Zoning Administrator Land Use approval, prior to Development Organization Review:

- Child day care²;
- Drinking places², except adult nightclubs^{1,3};
- Eating places with all alcoholic beverages¹;
- Food stores, except major grocery stores;
- Health clubs and spas;

¹.Term is defined in Article 1 of the Fremont Municipal Code, Title VIII, Chapter 2, Zoning.

².Term is elaborated on in Standard Industrial Classification Manual.

³.The special regulations of Article 21.3 of the Fremont Municipal Code, Title VIII, Chapter 2, Zoning apply to this use.

⁴.Requires a public hearing, see Article 25 of the Fremont Municipal Code, Title VIII, Chapter 2, Zoning.

Proposed Review Process: The site plan for the entire Major Retail Area would be subject to approval by the Planning Commission, as would proposals for any building 25,000 square feet or larger and the first building under 100,000 square feet regardless of size. Proposals for buildings less than 25,000 square feet would be subject to architectural approval by planning staff through the Development Organization Review. Staff would have discretion to refer any building under 25,000 square feet to the Planning Commission for architectural review. This approach is a slight departure from the standard process defined in the Pacific Commons Planned District in that, under the current PD, site plans and architecture are subject only to staff review for consistency with the Design Guidelines. The Major Retail Design Goals, Objectives and Guidelines are enclosed as Exhibit "G" and will become a part of the overall Guidelines for Pacific Commons (Project Wide Design Guidelines, new Section L).

All site plan and architectural submittals would be subject to the Overall Master Plan Intent as outlined on Page I-5 of the Pacific Commons Master Plan 2000 Standards and Guidelines to the degree feasible for this type of project, excluding Automall dealerships. In addition, development in the Major Retail Area will be subject to the Major Retail Design Goals, Objectives and Guidelines (Please see Condition of Approval 6).

Staff Discussion: A major retail center had been previously proposed and approved for Pacific Commons in 1996. In the revised conceptualization for Pacific Commons, the plan for the site evolved towards a more pedestrian-oriented, higher intensity development with retail uses integrated throughout the site. However, the market for higher intensity office/R&D development has disappeared, at least for the near term. At the same time, the market for a major retail center anchored by a "big-box" user has remained strong. Several big-box type users have looked

unsuccessfully for appropriate locations in Fremont. When the applicant approached staff about the potential for such a retail center being in Pacific Commons, staff suggested that perhaps the best location for such a center would be along Auto Mall Parkway, adjacent to the existing auto mall – an area where a lower intensity of development had been expected and where it would have the least impact on the approved higher intensity character of Pacific Commons Boulevard and the remainder of the site. Such a stand-alone development would have some advantages for the remainder of Pacific Commons, including providing some needed restaurant uses and other amenities for future office/R&D users who have balked at being the “pioneer” for the area. The “critical mass” for such restaurant and other uses would not otherwise be present without the larger retail anchor(s). The amount of retail space proposed here is consistent with the amount allowed under the existing Planned District and Development Agreement and sufficient retail entitlement remains for adequate retail uses as part of mixed use projects along Pacific Commons Boulevard and other Activity Centers.

3. *Designate additional lots southerly of the existing Auto Mall for additional auto dealerships:* The applicant is proposing to make three lots available for new auto dealers and has agreed to limit the marketing of two of those lots in the Office/R&D/Auto Dealership Area only to auto dealerships for a minimum period of three (3) years from the approval date of this Major Amendment. If, after three years of marketing two sites exclusively for auto uses Catellus is unsuccessful in attracting new auto dealers, Catellus can then make them available for R&D/office development or auto dealerships. A new PD land use designation is proposed: Office/R&D/Auto Dealership Area. The two exclusive sites are on either side of Cushing Parkway just south of the existing Auto Mall (Condition of Approval 10). A third site may be used for either an auto dealership or for the office/R&D uses permitted throughout the remainder of Pacific Commons.

Review Process: Auto Dealership development would be subject to the guidelines, concepts, and standards contained in the PD Guidelines for the Fremont Auto Mall Planned District (P-88-15) ("Auto Mall Design Standards"). This is appropriate because it would assure compatibility with the Auto Dealership improvements within the adjoining Fremont Auto Mall.

Staff Discussion. The proposal to add auto dealership to this area currently designated as Office/R&D would extend the adjacent existing auto mall use. Several auto dealers have expressed interest in the new sites and expansion of the auto mall would strengthen this critical retail sector within the City. Using the Auto Mall Design Standards will insure that the physical development of these sites will be compatible with the existing Auto Mall area.

4. *Allow a reduction in the minimum height requirements for the Office/R&D development along the west side of Braun Street, and for the proposed new auto dealerships and for the new retail center:* The applicant is requesting to reduce the height requirement, currently a minimum 2-story zone, to a minimum two story building height, but where buildings could be one-story spaces. This request is being made to allow for flexibility in responding to current market demand. The building at the corner of Bunche and Braun would not be required to have a two story height, but would be required to incorporate a 22 foot height minimum architectural element to hold the corner. Staff and the applicant have agreed to a minimum two story height (to the top of parapet or to the top of the roof plate) of 28 feet. The applicant has agreed that the entire building envelope would be two-story height (See Condition of Approval 7).

Along Bunche Drive, if Catellus is successful in attracting auto dealerships, they will be allowed to be single-story and designed according to the Standards described in Section 3 above. On the corner of Braun and Nobel, a single-story light industrial building would be allowed similar to existing buildings on Nobel. The request is being made to allow for flexibility in responding to current market demand, including the desires by two Fremont businesses to build and own new buildings in Pacific Commons, the interest by Newark and Milpitas owners to move to Fremont, and the interest expressed by two Fremont auto dealership owners to expand the existing Automall. Finally, the Major Retail Area would also be permitted to have one story buildings.

5. *A boundary change between the Pacific Commons and Auto Mall PDs. Parcel C of PM 7671 and Parcel A of PM 7100 will be rezoned from P-2000-214 to be included in the Auto Mall Planned District, P-88-15B.* These two small parcels of land are, practically speaking, oriented towards the Auto Mall area and are not well connected to the remainder of the Pacific Commons project. Uses proposed for the two sites relate to the Auto Mall. The applicant is therefore recommending incorporating them into the Auto Mall PD rather than Pacific Commons.

Option Agreement: The City currently holds options to purchase land for a Business Conference Center in Pacific Commons. The currently designated option parcels are located in the areas that Catellus proposes to develop if this Major Amendment is approved. The Option Agreement provides for options to purchase a three-acre parcel and a five-acre parcel which must be contiguous. The purchase price for the three-acre option is one dollar; the purchase price for the five-acre option is fair market value. Council will recall that the Option Agreement was amended once before to enable Catellus to lease a large portion of Pacific Commons to Cisco. The previous location of the City's option parcels was within the area of the Cisco lease and Council approved an amendment to the Option Agreement that relocated the option parcels outside of the Cisco leased area. The Option Agreement currently provides that the City has options on lots 93, 94, and 95, and a portion of 92 or 96, as shown on Vesting Tentative Tract Map 7200 (Exhibit "O"), equaling eight acres. Should Council approve the proposed major amendment to the Pacific Commons Planned District, these lots are proposed for development. Staff is now recommending, and Catellus agrees, to amend the Option Agreement to relocate the City's three-acre and five-acre option parcels to the east side of Christy Street to lots five and six, and a portion of four as shown on Exhibit "O". All other terms of the Option Agreement remain the same.

Project Analysis:

General Plan: The proposed P district is consistent with the existing General Plan land use designation of the subject site, designated RC-I, Restricted Industrial with a Commercial Industrial Overlay.

Policy LU 3.2: The General Plan allowed uses for Restricted Industrial is sufficiently broad, with regional retail uses permitted as a conditional use on sites with convenient freeway access and where the proposed use is compatible with the purpose of the industrial area. The General Plan requires restricted industrial land use areas be characterized by superior architectural and landscaping treatment and site planning. The proposed development is compatible with the purpose of the industrial area. The shopping center envisioned for the Major Retail Area would incorporate linkages to the nearby business districts and feature high quality architecture. The shopping center would also provide a needed and convenient amenity to the employees and visitors of Pacific Commons and to the surrounding business and

residential communities during business and non-business hours. Therefore the proposed regional retail uses are appropriate for this GP designation. Also, the Pacific Commons Planned District Development Standards and Guidelines, as amended by this proposed action, would require superior architecture, landscaping treatment and site planning.

The proposed rezoning of Parcels C of PM 7671 and Parcel A of PM 7100 from Pacific Commons (PLN-2000-214) to Auto Mall (P88-15B) is consistent with the existing General Plan land use designation of the subject site, designated RC-I, Restricted Industrial with a Commercial Industrial Overlay. The two parcels proposed for rezoning are adjoining parcels currently within the Auto Mall Planned District P88-15B, and have convenient freeway access. Auto dealerships are a permitted use within P88-15B. The rezoning of the proposed two parcels would be consistent with the large-scale, regionally oriented Auto Mall district where there is a concentrated area of auto dealerships. The addition of as many as three new dealerships adjacent to the existing Auto Mall will further strengthen this area.

Policy LU 3.3: The General Plan allows for commercial uses providing necessary services and large-scale regional retail in industrial designated areas.

Zoning: The current zoning of the site is "P" - Planned District. The proposal will not change the Zoning Designation.

The Zoning Ordinance, Article 18.1 (Planned District) Section 8-21811(g), Commercial and Industrial Planned Districts, requires that land uses selected for consideration in the planned district are those most similar in nature and function to the underlying general plan designation. Staff recommends that the Planning Commission recommend to City Council that the proposed land uses selected are appropriate in nature and function to the general plan designation, IR-C-I.

Site Plan and Architecture: Guidelines and standards for a major stand-alone retail area were not included in the most recent conception of the Pacific Commons Planned District and its extensive Development Standards and Guidelines. The current Guidelines call for a higher urban design and architectural standard than is often typical of a major retail center with big-box anchor tenants. The "power center" approved in 1996 required a plaza with restaurants clustered around it. Staff has developed Goals, Objectives and Guidelines for the site design and architecture for the proposed Major Retail Area and the applicant has reviewed and approved inclusion of these. These Goals, Objectives and Guidelines address the site edges, big box and corporate architecture, surface parking lot design, pedestrian character of the site, and urban design linkages between the Pacific Commons Boulevard corridor and Activity Centers and the Braun Street development at the Major Retail area.

Landscaping: The applicant has proposed several changes to the Streetscape Standards of the Pacific Commons Master Plan 2000, Planned District Development Standards and Guidelines.

Auto Mall Parkway Landscape: The proposal would modify the current Auto Mall Parkway street standards from a large dense planting of Redwood trees to preservation of the existing street trees, a double row of London Plane trees, with tree planting in the 40' landscape setback (on-site landscape easement) consisting of a mix of evergreen/semi-deciduous and flowering accent species.

Auto Mall Parkway currently has a double row of London Plane street trees along the Pacific Commons side of the street from the I-880 freeway to the Automall. This was consistent with the 1996 proposal to have retail along Automall. When office buildings were proposed along Auto Mall, the applicant proposed to remove the existing double row of London Plane trees in favor of buffering the tall office buildings from Auto Mall Parkway with densely planted redwood trees. The current retail proposal does not necessitate the removal of the London Plane trees, and staff recommended and the applicant agreed to preserve them in place.

Preserving the London Plane trees along Auto Mall Parkway will meet the applicants stated preference for views into the retail site. The very high canopy of the London Plane will allow views from the roadway. Preserving the trees will also be consistent with the City's policy to shade wide boulevards and provide adequate shade for the proposed public access/trail easement. The current spacing is 40 feet on center.

Additional trees would be planted in the 40' landscape setback (on-site Landscape Easement) beyond the London Plane Trees. The trees in the setback would be mixed species spaced in groupings.

Braun Street Landscaping: The proposal would modify the landscape setback along Braun Street (previously Boscell Road) from 25' to 13' - 25'. This range is proposed to encourage a pedestrian orientation for retail buildings, with the 12' landscape setback requirement (on-site landscape easement) reduced to '0' for pedestrian oriented buildings. A consistent setback would be encouraged to the degree feasible.

Gateways: The proposal: eliminates the northernmost Gateway along Cushing Parkway (see page IV-57). This is appropriate since the gateway eliminated is located near the Auto Mall Planned District (P-88-15B), and is not a Gateway to Pacific Commons.

Environmental Analysis: Attached is an Addendum to the Supplemental Environmental Impact Report for Pacific Commons Project and accompanying Traffic Study. The City Council certified the Final supplemental Environmental Impact Report and adoption of EIR Findings, Facts in Support to Findings and Statement of Overriding Consideration on May 9, 2000.

The 1996 and 2000 SEIR's identified impacts related to traffic, vegetation and wildlife (loss of wetland and upland habitat), waste water treatment, collection and disposal water supply, fire and police protection, hazardous/toxic material, air quality (related to traffic), construction dust, archeological, seismic and visual impacts. The other impacts were typical impacts associated with large industrial impacts. The major impacts related to traffic and vegetation and wildlife. The vegetation and wildlife impacts were mitigated through agreements with the Natural Resources and are reflected in the 2000 SEIR. Mitigation measures were adopted to reduce most impacts (except traffic) to less than significant. Mitigation measures were not available to reduce impacts to insignificant levels on certain street and freeway intersections or interchanges and several freeway segments. The EIR findings described several benefits resulting from the project to justify a Statement of Overriding Considerations. These include the environmental, economic, and social benefits of the project.

The current Pacific Commons Planned District Major Amendment (PLN2002-00263) proposes to relocate the proposed southerly extension of Boscell Road to the east and rename it Braun Street. This

revision to the street layout and the inclusion of a major retail center required review of the traffic portion of the SEIR. No other substantial changes are proposed in the project which would require revision of the previous SEIR.

The traffic analysis considered the location of the uses and evaluated the Auto Mall Parkway intersections at Christy Street, Braun Street, Boscell Road and Boyce Road/Cushing Parkway. The traffic analysis what geometric changes, particularly in left- and right-turn lane storage, would be required to accommodate the retail center currently proposed.

This updated traffic analysis found no traffic impacts associated with the proposed Major Amendment which would increase the level of significance of the impacts evaluated in the 2000 SEIR. The project traffic revisions reviewed by the updated traffic study add changes to the intersection turn lane storage requirements, geometric lane changes, and a signal design change to accommodate the proposed retail center. The updated traffic analysis of the proposed modification of Pacific Commons development found no violations of the City's General Plan Policy T1.2.1 to maintain a Level of Service D.

Staff recommends that the revised traffic analysis be considered a technical Addendum to the SEIR.

Public Hearing Notice: Public hearing notification is applicable. Two hundred eighty-seven (287) notices were mailed to owners and occupants of property within a minimum radius of 300 feet of the site on the following streets: Stevenson Boulevard, Auto Mall Parkway, Cushing Parkway Albrae Street, Boyce Road, Boscell Road, Auto Mall Circle, Osgood Road, Nobel Drive, Enterprise Street, Industrial Drive, Northport Loop, Brandin Court and Christy Street. The notices to owners and occupants were mailed on June 28, 2002. A Public Hearing Notice was delivered to The Argus newspaper on June 27, 2002 to be published.

ENCLOSURES:

- Existing Zoning
- Existing General Plan
- Exhibit "A" Rezoning Exhibit
- Exhibit "B" Preliminary and Precise Site Plan
- Exhibit "C" Conditions of Approval
- Exhibit "D" Updated Traffic Analysis of Proposed Modification of Pacific Commons Development dated May 10, 2002 and Pacific Commons Roadway Alignment Revision dated June 24, 2002
- Exhibit "E" Addendum to Supplemental Environmental Impact Report (SEIR) for Pacific Commons Project Catellus Development Corp.
- Exhibit "F" Revised Pacific Commons Master Plan 2000 Planned District Development Standards and Guidelines and Revised Pages (underlined and stricken) to the Pacific Commons Master Plan 2000 Planned District Development Standards and Guidelines
- Exhibit "G" Major Retail Design Goals, Objectives and Guidelines
- Exhibit "H" Pacific Commons Planned District Boundary
- Exhibit "J" Pacific Commons Planned District Boundary Legal Description

- Exhibit "K" Lot Configuration Plan
- Exhibit "L" Automall Planned District Boundary
- Exhibit "M" Automall Planned District Boundary Legal Description
- Exhibit "N" Vicinity Map
- Exhibit "O" Option Agreement

RECOMMENDATIONS:

1. Hold Public Hearing
2. Approve the Addendum to Supplemental Environmental Impact Report (SEIR) for Pacific Commons Project Catellus Development Corp. SEIR PLN-2002-214, State Clearinghouse #8721715 & 96052016.
3. Determine that the proposed land uses selected are appropriate in nature and function to the General Plan designation IR-C-I.
4. Find PLN2002-0263, Finding for a Major Amendment to a "P" District, is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Land Use and Local Economy Chapters.
5. Find PLN2002-0263, as shown on Exhibit "F" (Revised Pacific Commons Master Plan 2000 Planned District Development Standards and Guidelines, June 22, 2000), fulfills the applicable requirements set forth in the Fremont Municipal Code.
6. Waive full reading and introduce an ordinance amending Planned District P-2000-214 by approving PLN2002-0263, as shown on Exhibits "A,B,F,G,H,J,K,L,M" subject to findings and conditions in Exhibit "C".
7. Approve amendment to Option Agreement as set forth in Exhibit "O".

***2.17 WOOD SMOKE EMISSION LIMITATION**

Public Hearing (Published Notice) to Consider an Ordinance of the City of Fremont, California, Amending Title IV of the Fremont Municipal Code by Adding Chapter 11 Prescribing Regulations Governing the Installation, Repair, Replacement and Use of Wood-Burning Fireplaces

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Executive Summary: On December 11, 2001 the Fremont City Council considered a staff report recommending the adoption of an ordinance to limit wood smoke emission by restricting the use of wood-burning fireplaces. The City Council accepted the recommendation with the request that staff consider increasing the cost threshold triggering the replacement of existing fireplaces. The proposed ordinance was to be similar to the provisions recommended by the Bay Area Air Quality Management District (BAAQMD) in a model ordinance. The BAAQMD model ordinance in effect categorically disallowed installation of traditional wood-burning fireplaces. Introduction of the Fremont ordinance was delayed in order to evaluate and accept standards for testing open-hearth wood-burning fireplaces.

Staff recommends the City Council adopt the proposed ordinance aimed at reducing wood smoke in the City of Fremont. The proposed ordinance requires installation of approved wood-burning appliances and fireplaces in: a) all new projects; or b) when the fireplace is being repaired and the cost of repair is more than \$3,500; or c) when remodel work causes the opening of walls within 12 inches of the appliance and the cost of the total remodeling project or addition exceeds \$65,000 for a single project or cumulative work done on a project exceeds \$85,000 over a two-year period. The proposed ordinance does not regulate gas appliances and fireplaces.

Staff also recommends initiating an educational program to encourage the use of clean-burning manufactured logs in existing fireplaces.

BACKGROUND: In December 1998, the BAAQMD approved a model ordinance to reduce wood smoke from fireplaces. The BAAQMD model ordinance would prohibit the installation of non-approved wood-burning appliances in new and remodeled structures, and prohibit the burning of certain inappropriate fuels at any time. Several cities and counties in the Bay Area have adopted similar ordinances with minor modifications. In addition, the model ordinance was adopted by the Board of Supervisors of Alameda County on March 1, 2001. The President of the Alameda County Board of Supervisors subsequently recommended the City of Fremont consider adopting a similar ordinance.

At the December 11, 2001 City Council meeting, Council directed staff to develop an ordinance to limit wood smoke emission and asked staff to evaluate increasing the cost threshold triggering the replacement of existing fireplaces. In this proposed ordinance, the construction threshold to trigger the requirement for installing an EPA complying appliance is increased.

Discussion: According to BAAQMD, during the winter months fireplaces and wood stoves generate 40 percent of the particulate matter in the Bay Area, as well as carbon monoxide, nitrogen dioxide, volatile organics and toxic air pollutants. Of greatest concern are the fine particles, which can lodge deep in the lungs causing damage and increasing mortality. The BAAQMD wood smoke ordinance is an attempt to reduce these hazardous emissions by allowing EPA-certified stoves or wood heaters to be installed. These approved appliance and fireplaces generate about 75% less particulate pollution compared to the traditional fireplace.

Approved wood heaters may be used as freestanding heating appliances or as inserts in existing masonry fireplaces. These appliances are closed systems that burn fuel at high temperatures, thus reducing hazardous smoke. Aside from lowering pollution, the closed heating systems are also more energy efficient than open fireplaces where the majority of heat is lost through the chimney.

The following cities in the Bay Area have adopted the BAAQMD ordinance: Union City, Foster City, Los Gatos, Moraga, Morgan Hill, Palo Alto, San Jose, Saratoga, and Sunnyvale. The counties of Alameda, Contra Costa and San Mateo have also adopted the model ordinance. The model ordinance exempts gas fireplaces.

The proposed ordinance is modeled after the recommended ordinance by BAAQMD with several modifications:

1. The model ordinance prepared by BAAQMD prohibits the installation of all wood-burning appliances except pellet-fueled and EPA-certified wood heaters, also referred to as inserts. The introduction of the ordinance was delayed to develop provisions which would allow the construction of qualifying wood-burning fireplaces. The proposed ordinance modifies the model ordinance to allow wood-burning fireplaces that are certified by Northern Sonoma Air Pollution Control District. The Northern Sonoma Air Pollution Control District is the only agency known to staff that has a testing protocol for wood smoke emission of masonry fireplaces. Under this protocol, masonry fireplaces would be tested and approved if they met the 7.5 grams-per-hour emission standards.
2. The construction valuation threshold initially recommend by the staff is increased from \$50,000 to \$65,000. Also, a construction threshold of \$85,000 cumulative over two years is added. The purpose of this cumulative threshold is to ensure that large projects are not divided into small projects with construction valuation below \$65,000 as a method of avoiding compliance with this ordinance.

In December, some Councilmembers requested staff to investigate the feasibility of increasing the threshold. The proposal initially suggested a threshold of \$50,000 for triggering the replacement of an existing wood-burning fireplace or appliance with an approved product. The ordinance also has a second criteria in addition to valuation triggering the requirement; i.e., that the wall with the wood-burning fireplace must also be subject to remodel within 12 inches of the fireplace or appliance. Staff anticipates that only 5% of all remodeling projects or additions will affect the wall next to the fireplace within 12 inches of the fireplace. Considering that during the past year, March 2001 to March 2002, only 56 permits were issued for remodeling or renovation with a value between \$50,000 and \$65,000, raising the threshold would most probably exempt only three to four projects a year. Setting the triggering threshold to \$65,000 will most probably cause only three to four projects

to be exempted on yearly basis compared to lower threshold of \$50,000. Staff believes this will have minimal effect on the air quality and is recommending a triggering threshold of \$65,000.

3. An existing appliance must comply with the ordinance if it is reconstructed, repaired or altered and the cost of the repair is more than \$3,500.

This is a variation from the BAAQMD model wood-burning ordinance which requires an appliance to comply with the ordinance if it is repaired and the cost of the repair is more than half the cost of the average appliance.

Historic Buildings: The provisions of the State Historic Building Code will allow reconstruction of masonry fireplaces in buildings which are designated historic structures, notwithstanding the new ordinance. Older, architecturally-significant buildings which are not designated as historic would not come under the provisions of the Historic Building Code. Historical buildings for the purposes of this ordinance are defined as those buildings designated as historic resources in the General Plan, buildings on any other City-adopted listing of historic resources, buildings which have been identified after appropriate analysis as being eligible for the State or National Register of Historic Places, or buildings recognized by the Historical Architectural Review Board as having historic merit.

California Environmental Quality Act Compliance: The mandatory wood-burning stove and fireplace ordinance is categorically exempt from the California Environmental Quality Act since this action is designed to prevent “the release of toxic air contaminants” (Sec. 15330, CEQA Guidelines).

Cost Impact: The cost estimate is based on information obtained from a supplier of EPA approved wood-burning and gas-burning inserts. To convert an existing wood-burning fireplace to gas burning will cost approximately \$2,100 to \$3,900 in labor and materials. The cost for replacement with an EPA-approved wood-burning fireplace including installation could be \$3,500 to \$4,500. Conversion of an existing fireplace to an EPA-approved fireplace can be relatively expensive and is not required by this ordinance unless major repair or remodeling is being done.

The installation cost would not vary considerably for new construction. The main variant is the cost of the unit. An EPA-approved wood-burning heater or insert can cost between \$1,200 and \$3,000 and an EPA-approved gas-burning heater can cost between \$1,200 and \$2,400. The type of units currently allowed in the California Building Code are approximately \$600. Passage of the ordinance would result in a construction cost increase of around \$600 to \$2,400 for new buildings. However, staff believes that some of the cost can be recovered through decreased home heating cost due to the much higher efficiency of the EPA-approved unit which typically generates more heat into the living space. The cost of testing and certification for wood-burning fireplaces can vary drastically depending upon the success of testing and the extent of any required modification to achieve certification.

Public Outreach: On September 20, 2001, and February 6, 2002, two public meetings were held. The public attendance was very low, however, the participants were in support of the proposed ordinance. There was a concern regarding removing wood-burning appliances as a source of heat during a time when fuel costs are rising. The proposed ordinance does not prohibit wood as a source of heating fuel. The ordinance, however, requires wood to be used in an efficient system such as those approved by EPA. In these approved closed heating systems wood is burned at high temperatures generating

substantially more energy and less hazardous emission. Compared to traditional wood-burning systems, the EPA approved systems are substantially more energy efficient.

Also, it was suggested that a parallel program should accompany this ordinance to encourage the use of clean-burning manufactured logs. The educational program will have positive effects on the air quality by initiating a higher use of clean-burning manufactured logs instead of wood in existing fireplaces. BAAQMD also supports the educational program in relation to existing fireplaces and is expected to work with the City's Environmental Services Department to develop an educational program.

ENCLOSURE: The proposed City of Fremont wood-burning Smoke Reduction Ordinance.

RECOMMENDATIONS:

1. Hold Public Hearing.
2. Waive full reading and introduce Chapter 11 to the Title IV of Fremont Municipal Code prescribing regulations governing the installation, repair, replacement and use of wood-burning fireplaces.

5.1 DOUBLE WOOD GOLF COURSE DEVELOPMENT AGREEMENT

Public Hearing (Published Notice) (Referral from the Planning Commission) to Consider a Development Agreement Between the City of Fremont and Double Wood Golf Course LLC for a Golf Course to be Located Easterly of Interstate 680 and Northerly of Avalon Heights Terrace (2002-00273)

Contact Person:

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Executive Summary: Double Wood Golf Course, LLC seeks a development agreement with the City to protect its substantial investment in their land use entitlements. In entering the development agreement the City would obtain reduced green fees for seniors and junior residents Monday through Thursday, advance booking privileges for City residents, free City use of facilities, two City-sponsored tournaments annually, four free green fee passes per month for City business development purposes and \$22,500 dollars per year for ten years to be applied to park or recreational facilities in Mission San Jose and/or Warm Springs. On June 27, 2002, the Planning Commission recommended the development agreement to City Council, but recommended two modifications to the terms of the development agreement. The first modification would redirect the \$22,500 annual payment to Environmental Services for creek restoration wherever deemed necessary in the City. The second would allow the green fee discounts to be applied on Special Event days when the event is not ongoing. For example, if a special event occurs on a Thursday morning, the discount would be available that afternoon. Double Wood had no objection to these modifications.

If the development agreement is approved, Double Wood would receive vested rights to construct the golf course in conformance to the Planned District and other previous approvals. The golf course would be exempted from any future ordinance or policy that would prevent or otherwise restrict the course's construction to the maximum extent allowed by State law. The golf course would not be exempted from new fees or modification of existing fees (such as impact fees) and uniform building codes and similar regulations that are applied citywide.

The development agreement would expire in ten years, but the City benefits related to the golf course operations would continue on for the life of the course, unless modified or deleted by mutual agreement. The cash payments would terminate after the tenth payment. An implementing agreement to assure continuation of the remaining benefits will be included in the development agreement as an appendix.

On June 27, 2002, the Planning Commission recommended the agreement to the City Council with the modifications noted above.

BACKGROUND: P-90-9, DA 90-1, GP-90-7 and EIR-90-31 were approved in May 1990 for the Avalon residential project. The subject parcels were included in the Avalon Homes as private open

space. On May 23, 1995, the City Council approved a planned district amendment (P-90-9H) to allow the potential consideration of a golf course on the subject property. On July 9, 1996, the City Council approved Double Wood's proposed amendment to the Planned District, P-90-9 (I), for the 18-hole golf course.

On October 11, 2001, the Planning Commission approved a preliminary grading plan and minor amendments to the Planned District to reflect changes resulting from requirements of the State Water Resources Control Board (PLN 2001 00360). Double Wood has been seeking approvals from other public agencies since the City approval in 1996. Although they now have most of the approvals from those agencies, they are seeking refinements to the conditions imposed by the U.S. Fish and Wildlife Service (regarding extent of conservation easements) in order to make the project feasible. Grading and course development cannot begin until issues with the USFWS are resolved. The course may require two or more years to complete. Double Wood seeks a development agreement to protect the substantial investment in their entitlements.

Development Agreement Description: The project is a development agreement between the City of Fremont and Double Wood Golf Course LLC. The major features of the agreement are as follows:

City Benefits:

Green Fee Discount: City of Fremont seniors (60 years old and over) and juniors (18 years old or younger) would receive green fee minimum discounts of 10 percent Monday through Thursday. If discounts are offered to other nonresidents, the discount for Fremont seniors and juniors will be 5% more than that offered to other seniors and/or juniors. For example, should a discount of ten percent be offered to all seniors, Fremont seniors will be given 15% discount.

Planning Commission Modification: The draft agreement provided to the Planning Commission for consideration states that "This discount may not apply on **days** [emphasis added] when special events are taking place on the golf course." The Planning Commission recommends the word "times" be substituted for the word "days" to allow discounts for parts of the day when the special event is not occurring.

City Tournaments: Two City-sponsored tournaments per year will be provided. One-year advance scheduling will be required.

Free Passes: Four free passes per month are to be provided to the City Manager for use by the City for business development purposes.

Advance Bookings: City residents will be allowed to book tee times one day in advance of non-residents if the City implements a program providing discounts and other benefits to Fremont residents. The golf course operator will not be obligated to provide these one-day advance bookings if the City fails to initiate and operate such a program.

City Use of Clubhouse: The City would have the right to use the clubhouse facilities four times per year for City activities.

Cash Contribution: In the sixth year of course operation, Double Wood is required to pay the City \$22,500 during that year and each year after for nine more years, for a total of \$225,000. The cash contribution would be used for recreational or park facilities in the Mission San Jose and/or Warm Springs planning areas.

Planning Commission Modification: The Planning Commission recommends that the ten annual payments of \$22,500 be directed to the Environmental Services Division and the money used for creek restoration projects City-wide.

Indemnity: Under the development agreement, the developer will indemnify, defend and hold harmless the City from any claims which arise because of any act or omission by the developer or its agents.

Developer's Benefits:

Vested Rights: The Planned District, the preliminary grading plan and other City approvals (the "Existing Approvals") will control the development of the golf course and any regulation or similar action enacted after the development agreement ("Subsequent Enactment") which prevents the construction of the golf course or would require Double Wood to obtain additional discretionary approvals would be inconsistent with the terms of the agreement. Double Wood would be exempted from such regulations.

The agreement does not prevent the City from imposing new City-wide fees or modifying existing City-wide fees providing those fees do not conflict with the terms, spirit or intent of the agreement. Changes to or new uniform code regulations and new rules, regulations and official policies which do not conflict with existing ones and do not prevent or otherwise restrict the golf course construction are also allowed.

Building Moratorium: Should any building moratorium or similar measure be adopted during the life of the development agreement, the City would not apply it to the golf course to the fullest extent permitted under State law.

City Cooperation: The agreement requires the City to cooperate with Double Wood in its efforts to get approvals from other public agencies. That cooperation includes the possibility of the City entering into binding agreements with those agencies if necessary.

Development Agreement Term: The development agreement would expire in ten years, while the City benefits related to the golf course operations would continue on for the life of the course, unless modified or deleted by mutual agreement. An implementing agreement to assure continuation of those benefits will be included in the development agreement as an appendix.

The financial contributions for recreation or parks projects in the Mission San Jose and/or Warm Springs area would cease after the tenth annual payment.

Annual Review: The developer must apply for an annual review by the Planning Commission to determine if the developer is in compliance with the provisions of the agreement.

General Plan Conformance: The City Council may not approve a development agreement unless it finds that the provisions of the agreement are consistent with the General Plan and any applicable specific plan. There is no specific plan applicable to the area. The following paragraphs provide information on the relationship of the project and the General Plan.

The existing General Plan land use designations for the project site are Open Space, Hill Face Open Space and Toe of the Hill. On July 9, 1996, the City Council found the golf course project (as designed to mitigate the environmental impacts identified in the project Subsequent EIR) to be consistent with the General Plan. The following General Plan Goals, Objectives and Policies, cited in the Report to the City Council and used by the City Council as the basis for finding the project in conformance with the General Plan are also relevant for the development agreement:

- Land Use Policy LU6 – developments in the Hill Area are to be “consistent with its character and environmental constraints;
- Fundamental Goal F-12, and Parks and Recreation Objective PR1– to provide “parks, recreational facilities and opportunities”;
- Land Use Goal and Land Use Policy LU4.4 relating to conservation of open space and development of recreational uses that conserve open space character and minimize impacts on mature landscaping and environmentally sensitive areas;
- Open Space and Natural Resources goals, objectives and policy related to wetland, endangered species and habitat protection (Goal OS 2, Objective 2.2, Policy OS 2.2, Natural Resources Goal NR 1, Objective NR 1.1 and Policy NR 1.1.1).

The proposed development agreement would increase recreational opportunities through the discount and advance booking programs, the tournaments and the facility use. Nearby recreational and park facilities will be enhanced by the financial contribution required by the agreement.

Purpose and Benefits of the Development Agreement: The proposed development agreement is intended to provide benefits to both the City and the developer. The primary benefit secured by Double Wood through the development agreement is assurance regarding its entitlement to develop its property to a level that justifies its investment in environmental mitigation and infrastructure. This agreement provides a degree of certainty to Double Wood in terms of changes in local laws, but provides no relief from the obligation to pay fees which are imposed on a City-wide basis.

The City obtains significant benefits from the developer in exchange for this certainty. The primary benefits which are not ordinarily available through the regular development process include discounts and advance bookings for certain residents of the City; two City-sponsored golf tournaments, City use of the clubhouse four times a year, four free passes each month and cash contribution for park facilities in the Mission San Jose and/or Warm Springs Planning Area.

Planning Commission Action: On June 27, 2002 the Planning Commission found that PLN-2002-00273 was covered by the EIR and addendum for the golf course (SEIR 90-31 and SEIR 90-31-2000); is consistent with the objectives, policies, general plan land uses and programs specified in the General Plan; is compatible with the uses authorized in and the regulations prescribed for the land use district in which the real property is located; is in conformity with the public convenience, general welfare and good land use practice and will not be detrimental to the health, safety

and general welfare; and will not adversely affect the orderly development of property or the preservation of property values. The Planning Commission recommended PLN-2002-00273 to the City Council in conformance with Exhibit "A" (Development Agreement), with the recommendation that Article Three, Section 3.7A be modified to read, "This discount may not apply on ~~days~~ times when special events are taking place on the golf course"; and that Section 3.7E be modified to read as follows: "Contributions for creek restoration. Beginning at the sixth year of operations, the Developer shall make to the City and the City shall receive cash payments in the amount of \$22,500 annually to go to the Environmental Services for creek restoration wherever deemed necessary." (Vote on action: 6-0-0; one Commissioner absent.)

Environmental Analysis: In April 1991, the City Council certified the original EIR-90-31 as complete in conjunction with approval of the Avalon development Planned District P-90-9. EIR-90-31A, the subsequent environmental impact report (SEIR) for the golf course was recommended as complete by the Planning Commission on May 26, 1996 and certified by the City Council on July 9, 1996. On March 28, 2000, the City Council denied an appeal of the Assistant City Manager's decision to prepare an addendum to the Subsequent EIR. On April 18, 2000, the Assistant City Manager approved an addendum to the SEIR for the golf course to reflect changes made to the mitigation measures required by the State Water Quality Control Board.

The development agreement would grant the City and some of its residents certain benefits related to golf course operations (e.g., discounts, City tournament times, advance reservations) and would provide cash contributions to unidentified City park facilities in the Mission San Jose and/or Warm Springs Planning Area. The course operations related benefits would not affect the environmental impacts and mitigation measures addressed in the Subsequent EIR and its addendum. The cash contributions are not related to the golf course operations. The projects receiving the cash contribution will be analyzed for their environmental impact when the projects are considered by the City. The City Council should find that the subsequent EIR and its addendum address the project impacts and that no further environmental document is needed for the development agreement as none of the conditions described in CEQA Guidelines Section 15162 have occurred.

Response from Agencies and Organizations: No comments have been received.

ENCLOSURES:

- Planning Commission Report of June 27, 2002.
- Development Agreement (Exhibit A).

RECOMMENDATIONS:

1. Hold public hearing.
2. Find EIR 90-31A and its addendum adequately analyze the project and that none of the conditions described in CEQA Guidelines Section 15162 have occurred. Therefore, no further environmental document is needed for this project.
3. Find the development agreement to be consistent with the General Plan.
4. Waive full reading and introduce an ordinance approving a development agreement with Double Wood Golf Course, LLC, as set forth in Exhibit "A".

OR

5. Waive full reading and introduce an ordinance approving the development agreement with Double Wood Golf Course, LLC, in conformance with Exhibit “A” as revised to reflect the Planning Commission’s recommendations as set forth in this report.

5.2 TREE PRESERVATION ORDINANCE

Public Hearing (Published Notice) to Consider Tree Preservation Ordinance Revisions, Related Zoning, Subdivision, and Penalty Revisions and Master Fee Schedule Revisions (Summary Ordinance) (Continued from June 25, 2002)

Contact Person:

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Executive Summary: Revisions are proposed for the Tree Preservation Ordinance, originally enacted in May 1966 and amended thereafter. The proposed changes are intended to provide clarity to staff and property owners regarding the types and sizes of trees to be protected, the process to gain approval of a removal request, standards for city required tree replacement, and penalty for unlawful removal. The City Council gave staff direction on the parameters of the proposed ordinance on November 6, 2001 and at a Study Session on February 6, 2002. The Planning Commission reviewed the proposed ordinance on June 13, 2002. Along with the Tree Preservation Ordinance are minor changes to the Zoning Code to provide adequate space for trees in new development, minor changes to the Subdivision Ordinance to make it consistent with the new provisions of the Tree Preservation Ordinance, and changes to penalty provisions to update the designation of officials responsible for enforcing the ordinance. A resolution establishing a fee schedule for Landmark tree designations and removals is included with this report.

BACKGROUND: On May 17, 1966, The City Council adopted the Tree Preservation Ordinance. The Ordinance originally required a permit to remove trees (including Olives) that have trunk diameters of six inches or larger when measured at four and one-half feet from ground level on lots larger than 10,000 square feet, excluding commercial type fruit or nut bearing trees. In November 1971 the trunk diameters were reduced from six inches to four inches and in October 1989 Black Walnuts were included for protection. Other than those two changes, the description of trees requiring permits for removal has remained unchanged.

The Ordinance has received three other significant changes throughout the years that are worthy of mention. In November 1971 the City Council required that a Tree Location Plan be submitted with applications for a Planned District, Subdivision, Planned Unit Development, Conditional Use Permit, or to the Development Organization. Plans are required so that proposed tree preservation can be evaluated.

In October 1989, the City Council added Landmark Trees to the Ordinance to protect special trees. A City Council appointed Beautification Committee had worked from 1971 to 1972 to prepare a list of 60 trees (or groups of trees) that Council adopted by resolution on May 16, 1972. The list was to be amended from time to time by City Council resolution, but there is no record that the Beautification Committee returned to Council to request an update. Staff is reviewing the status of existing Landmark Trees and will report back to Council if trees need to be removed from the list due to death, removal, or severe damage.

The third significant change also occurred in October 1989. A penalty for the unlawful removal of trees was established as the replacement value of the removed trees as calculated based on the “Guide to Establishing Values of Trees” published by the Council of Tree and Landscape Appraisers. This book continues to be the industry standard for appraising trees, but is now called the *Guide for Plant Appraisal* and is published by the International Society of Arboriculture.

The purpose and intent of the existing Ordinance relies heavily on the notion that wind is a serious problem in Fremont and that mature trees are on the forefront of combating the injurious effect of such winds. The Ordinance states that trees are being cut down at such a rate that substantial danger to public health safety and welfare is attributed to the unrestricted high winds. The intent to preserve the natural beauty is mentioned as well. Since 1966, cities have come to the realization that they have the right to regulate private trees not only to preserve environmental benefits such as wind mitigation, but also to foster aesthetic values and quality of life.

In evaluating the City’s ordinance, staff acquired tree preservation ordinances from 22 other Bay Area cities, attended seminars sponsored by the International Society of Arboriculture, and had informal discussions with colleagues in other cities. Every ordinance is unique and considers those issues pertinent to those cities. The proposed draft Tree Preservation Ordinance is attached. (See Exhibit A.)

Review of Key Issues (Reasons) for Changing the Tree Preservation Ordinance: The Tree Preservation Ordinance leaves much up to interpretation on how tree preservation is to be achieved. The City has been generally effective at preserving trees with the current Ordinance, but when presented with legal challenges to enforcement, the Ordinance falls short. Specifically, the Ordinance lacks the following:

1. A stated purpose (legislative findings) that addresses current land use in Fremont, and current attitudes about why trees should be preserved.
2. A size threshold for tree protection that focuses on preservation of mature trees.
3. Standards to evaluate trees for preservation or removal.
4. Process to evaluate trees for preservation or removal (as a stand-alone application or in the context of a development application.)
5. Methods for mitigation (replacing a tree or compensating for its loss).
6. Penalties that emphasize replacement of tree(s) with a tree(s) of like value.
7. Standards to evaluate a tree for potential landmark status.
8. Standards to determine when a tree has been severely damaged.

An overview of how a new proposed ordinance would address these key issues is discussed below in detail and referenced by numbers that correspond to the above list.

When the current City of Fremont ordinance was written in 1966, city tree preservation ordinances were unusual. Most cities started developing ordinances in the 1970’s and 1980’s. When the ordinance was written in 1966, there was little experience to rely on. This report discusses how the current ordinance is less effective at preserving trees in Fremont today, but it should be noted that the original ordinance was ahead of its time and has remained largely unchanged for 35 years.

1. Purpose for Ordinance (Legislative Findings):

Issue: When the current ordinance was written in 1966, the predominately agricultural areas of Fremont were destined for development. The Purpose and Intent portion of the ordinance focused on the need to maintain mature trees to help mitigate winds through Fremont with a lesser emphasis on contribution to natural beauty. Now that Fremont is predominately a developed city, the reasons for tree preservation should be expanded to address environmental benefits beyond just wind control and to recognize the beneficial effect of trees on the character and livability of the community.

Proposed in new ordinance: Staff has drafted a new section titled “Legislative Findings” that will take the place of the old “Purpose and Intent,” which sets out the City’s current purposes. (See Exhibit A, page 3 “Legislative Findings.”)

2. Size Threshold for Protected Trees:

Issue: The current ordinance generally requires a permit to remove a tree that has a four inches trunk or larger measured four and one-half feet from ground level and is on a lot larger than 10,000 square feet. Reviewing trees that are only four inches in diameter requires the review of the proposed removal of almost every tree that is older than two years. An opposite effect results from exempting from regulation trees on lots of less than 10,000 square feet. The existing ordinance allows the unregulated removal of too many mature trees, particularly in large areas of Fremont that have few lots near the 10,000 square foot threshold.

Proposed in new ordinance: Evaluation would now focus on mature trees throughout Fremont on lots of all sizes (see table below, titled “Protected Trees”). The proposed criteria for approving or denying an application, discussed later in this report, takes into account the use conflicts that may arise on lots under 10,000 square feet while providing an opportunity to preserve valuable trees where such conflicts may not exist on a small lot. Staff believes that there is little purpose in regulating small (immature) trees unless a tree is a required replacement for a previous approved removal or is on vacant land or is a tree planted as a condition of development application approval. The following table summarizes the proposed changes in the classification of Protected Trees:

PROTECTED TREES

Regulated	Existing Ordinance	Proposed Ordinance
Lot Size	Larger than 10,000 Square Feet	All Lots, except on Single Family Home lots 10,000 square feet or less, where side yards and rear yards are exempt from regulation.
Size of Tree	≥ 4" DBH*	≥ 18" DBH: All Trees. ≥ 10" DBH: Trees Native to Fremont**. ≥ 6" in Development Plan Review. ≥ 6" on Vacant or Under-Developed Land. Any tree required in a development.
Species Excluded	Commercial-type Fruit or Nut Bearing (Except Walnuts and Olives are protected).	Commercial-type Fruit or Nut Bearing (Except Walnuts and Olives are protected).

* DBH – Diameter at Breast Height (Trunk diameter measured four and one half feet from ground level).

** Trees Native to Fremont includes Oak, Redwood, Buckeye, Madrone, Sycamore, Big-Leaf Maple, Redbud, and Bay. Additionally, staff proposes a list of non-native trees that have exceptional adaptability to Fremont, which may include Fremont Cottonwood, California Pepper, European Olive, Black Walnut, and Deodar Cedar.

The trunk diameter of 18 inches is the size when most species of trees are considered mature. There are species that will barely reach this dimension in their lifetime, such as flowering plum trees. There are also species that will reach this size in a few short years, such as London Plane trees. The vast majority of trees, however, are considered mature at 18 inches DBH.

Native trees would be regulated at a threshold of ten inches DBH, because there is generally a higher value placed on trees that are indigenous to the area. Beyond the value that other trees provide, native trees are appreciated for their greater capacity to adapt to their environmental setting and for the cultural/historical connection to the area they symbolize.

When a tree is considered in the context of a development application or when it sits on a vacant or underdeveloped parcel, it will be regulated from a threshold of six inches DBH. In these cases there is opportunity to encourage development that will protect trees and to prevent the removal of trees in cases where they do not impede development. Also, trees this small can be considered for relocation to accommodate a development proposal.

Fruit and nut trees are usually planted as a food source on private land and when some species reach a certain age the fruit production drops off and the tree needs to be replaced. This is also true for homeowners growing fruit and nut trees in their backyards. In order to allow companies and individuals to manage their fruit production these types of trees are not regulated and as policy they are not allowed as replacement for a protected tree removal.

At the February 19, 2002 City Council Study Session, staff presented a number of different options to regulate trees on lots 10,000 square feet or smaller. This was a response to City Council concerns about the ability of homeowners to add on to their homes and for the general use of their land when they lived on lots 10,000 square feet or less. The proposed ordinance only regulates trees in the front yards of residential properties that are less than 10,000 square feet. Side and rear yards will remain unregulated, except for trees required through the original development approvals or a tree that was planted as a required replacement for a tree removal.

3. Evaluating Trees for Preservation or Removal:

Issue: The existing ordinance does not provide guidance on how to evaluate a protected tree for removal or preservation. The stated purpose of protection from wind and with a secondary emphasis on preserving natural beauty leaves the City open to challenge when it attempts to apply it to actual cases.

Proposed in new ordinance: To provide clear expectations to property owners, the new ordinance will include standards for evaluation.

The following are criteria supporting granting a removal:

1. The tree is a safety hazard due to disease, age, or damage and cannot be returned to a safe condition through reasonable arboricultural practices.
2. The tree has a relatively short life expectancy.
3. The tree is a host to a plant, insect, or other parasitic organism that cannot be eliminated through reasonable measures and if left in place will endanger other healthy trees.
4. Removing a tree will benefit other more desirable trees by eliminating overcrowding.
5. A current Development Plan application on file with the City cannot be reasonably redesigned to accommodate preservation of a tree, and removing the tree will result in a project that is superior.
6. Full enjoyment of existing structures, utility services, or other uses of real property is substantially impaired and cannot be achieved through reasonable measures not requiring damage or removal of a tree.
7. The tree has lost most of the aesthetic value that is typical of trees of the same species and size, and this aesthetic value cannot be restored with reasonable arboricultural practices.

The following are criteria supporting denying a removal:

1. The tree is an asset to the community because it plays an important environmental role as part of a windbreak, protecting soil erosion, significant wildlife habitat, or reduces reflective glare from buildings or pavement.
2. The tree contributes substantially to the aesthetic beauty of an area or its future contribution throughout its lifespan will likely be substantial.
3. The tree is located on vacant land, and if left undisturbed, will likely develop into an asset to the community.
4. The tree is a member of a desirable group of trees that is mutually dependent on each other for structural integrity or aesthetics.

4. Process to Evaluate Trees:

Issue: The existing ordinance does not specifically describe the process to evaluate a tree for preservation. This is particularly true in the context of reviewing a development project.

Proposed in new ordinance: The procedure to evaluate an application for tree removal, whether through a development project or as a stand-alone tree removal application, is summarized in the table titled Review and Approval for Tree Removal (see Exhibit B).

The ordinance uses the City Council appointed bodies that already review various projects, as directed by the Zoning Ordinance, to recommend or decide on the fate of the existing tree or trees on a project in the context of the entire project. Staff reports to those bodies will be accompanied by a recommendation from the City Landscape Architect or City Manager's designee. This procedure is similar to the process staff has used for years, however, the existing ordinance does not specifically describe this process.

All landmark trees require City Council approval. In the case of a landmark tree in a development project, an alternative approval process may be considered for the applicant. (Landmark trees are discussed in more detail later in this report.) The new ordinance includes an option for such an applicant where they may choose to take the landmark tree to Council for consideration before proceeding with a development design and application.

All decisions regarding tree preservation can be appealed to the City Council; however, grants for stand alone tree removals by City Landscape Architect are final. (Using the criteria as discussed above, these are typically routinely granted.)

5. Methods for Mitigation:

Issue: The current ordinance addresses the removal of a tree, but does not address the mitigation for the loss to the urban forest when a tree removal permit is granted. There is no specific language that authorizes the City to require anyone to replace a tree when they are permitted to remove an existing one. The ordinance does require the value of an unlawfully removed tree to be calculated based on the replacement value of the tree prescribed in the Guide for Plant Appraisal, but it is unclear when the ordinance intends for the City to accept penalties in cash payment or to require actual tree replacement.

Proposed in new ordinance: In the ordinance, tree replacement for unauthorized removals will generally be valued up to the replacement (appraised) value of the removed tree. Trees that are authorized for removal will only have to be replaced by a 24-inch box tree. In cases where the lot cannot support the quantity or size of trees needed to achieve full replacement, the City will accept cash payment in lieu of replacement. Cash payments would be spent on City sponsored tree planting or education and outreach for tree preservation and tree planting. In certain cases where there is no substantial loss to the urban forest by the tree removal, the city may reduce or waive the replacement requirement.

A clear requirement to replace trees with trees up to the replacement value of those unlawfully removed will help Fremont maintain a consistent tree canopy throughout the city. If the unauthorized tree removal met the approved criteria for authorized removals, then only the minimum 24-inch box tree replacement would be required. Specific criteria will clarify when a tree removal should be considered and when a tree removal should be denied. (See issue 3 above.)

6. Penalties:

Issue: The penalty for removing protected trees without a permit in the current tree preservation ordinance is a civil action to abate based on the replacement value of the tree as calculated using the Guide for Plant Appraisal. The violation of the ordinance is also an infraction. A first offense is \$100, second offense is \$200, and additional offenses are \$500 each.

Civil penalties in the amount of the replacement value of the tree have been difficult to enforce. There is little the City can do other than accept cash when a violator refuses to replace trees. The City has been reluctant to accept cash because the site remains without the lost tree and because the City does not have a program in place to spend the cash in a way that directly addresses the unlawful loss of the tree. Tree mitigation is more meaningful if trees are replaced in the general location from where they were removed. To date, the City has not required cash payments equal to the value of the replacement tree for an unlawful removal. In some cases, the value of the unlawfully removed tree can be quite high.

Proposed in new ordinance: Penalties will stress tree replacement equivalent to those that were unlawfully removed. In some cases, it will be difficult to force violators to replace trees. In those cases fines will be levied as a last resort in order to encourage compliance with the tree replacement.

When the City believes a violation of the ordinance has been committed, an investigation will be conducted resulting in the imposition of written mitigation requirements if violations are found. Mitigation will be for the full replacement value of the removed trees in accordance with *The Guide for Plant Appraisal*. If the violator refuses to replace the tree(s) in a reasonable predetermined time frame, a fine of up to \$500 per day may be imposed for each day after the deadline that the property remains out of compliance.

The City may apply penalties to both the property owner and the person responsible for performing the tree removal or severe damage. This should deter tree companies from assisting in unlawful removals.

7. Landmark Trees:

Issue: The Landmark Tree List that was adopted by City Council resolution in 1972 has never been updated. Trees that have died or have been severely damaged remain on the list. Trees that should be considered for the landmark status have never been brought to Council for consideration. The original intent was for City Council to consider from time to time adding to or deleting certain trees on the list. The procedure for recommending trees to City Council is not clear in the ordinance. Also, the criteria used to classify a landmark tree, as described in the current ordinance, is broad and subject to much interpretation.

Proposed in new ordinance: The new ordinance maintains a Landmark tree list and also adopts a series of specific and general criteria that will provide staff guidance in deciding when it is appropriate to bring a tree to the City Council for consideration. There is a short list of specific criteria, such as size, that makes special trees presumptively eligible for the City Council consideration for landmark tree designation at its earliest convenience. There are also more general criteria that allow the City Council the flexibility to consider trees on the basis of more subjective criteria, such as unique historical significance.

The following criteria are proposed:

Trees should automatically be presented to City Council for consideration if a tree meets all of the following criteria:

1. DBH is 54 inches or greater
2. The tree's structure or character exemplifies its specie, or it has an extraordinary form caused by environmental influences.
3. The tree is reasonably free of structural defects posing a threat of either injury to persons or of substantial damage to property.
4. The tree has unique and outstanding aesthetic appeal.
5. The tree will survive at least five more years while retaining substantial aesthetic appeal.

The City Council may consider the following additional criteria at their discretion to support placing a tree on the Landmark Tree List:

1. The tree has important historical significance in that it is associated with events, people or places that have made significant contribution to local, state or national cultural heritage.
2. The tree is an outstanding example of a native tree of Fremont.
3. The tree has an especially prominent and beautiful visual impact.
4. The tree is one of a group of trees that meet the criteria for landmark trees.
5. Any other factor that causes the tree to have a special and important significance to the community.

8. Pruning Trees:

Issue: The current ordinance does provide the authority to deny the removal of a tree, but it does not specifically say that you cannot prune the tree to the point of gross disfigurement. It is not uncommon for an applicant who was denied a removal permit, to proceed with removing most of the limbs that give the tree its natural character and provide structural stability. It is also common for property owners to hire people to prune their trees who, because they are not certified tree workers, proceed to ruin the structure of a tree. Poor pruning can lead to severe damage of a tree that makes it unsuitable for preservation. More trees are lost to bad pruning habits in Fremont, than unlawful removals.

Proposed in new ordinance: The Ordinance relies on current industry standards for directing proper pruning of trees in Fremont. The International Society of Arboriculture (ISA) educates,

certifies, and monitors the performance of Arborists and Tree Workers. Most reputable tree-pruning companies in the Bay Area have Certified Arborists and Tree Workers on staff. ISA has printed tree-pruning guidelines available to the public. Staff believes it is excessive to require that homeowners hire certified arborists to work on their trees, but it is reasonable to require pruning to be performed as prescribed in the ISA guidelines. By requiring trees to be pruned by the ISA guidelines, staff and the public will have a clear understanding as to when a tree has been severely damaged by improper pruning. A severely damaged tree is regarded as a tree removal in the new ordinance.

Zoning and Subdivision Ordinance Changes: A new tree preservation ordinance as proposed in this report requires some alterations to various other sections of the Fremont Municipal Code for consistency. Except for landmark trees that are all subject to the same regulations, the proposed ordinance does not affect City-owned trees, such as those in parks and rights of way. The Maintenance and Recreation Services Department intends to present the City Council with a comprehensive proposal for the regulation of these trees next year.

Zoning Ordinance changes primarily focus on providing adequate space to plant trees. The most notable change is one that requires any tree planted in a parking lot planter or any other planted area, be a minimum six feet wide in any dimension and be no less than 48 square feet. The intent is to provide adequate space for healthy growth of canopy trees in locations where they are most needed (i.e., parking lots). Other provisions include increasing the minimum planted size of trees to the current industry standard of 15 gallon from the current code requirement of only five gallon. The full text of the Zoning Ordinance changes is attached. (See Exhibit C.)

Other Zoning Ordinance changes increase planter width around circulation and parking areas to six-feet in all districts and to ten-feet where industrial districts abut residential. This will assist in the planting of required trees around parking lots and in industrial areas it will allow large screening type trees. The changes proposed put into code many of the policies that staff has been requesting from applicants in recent years.

The Subdivision Ordinance revisions are required in order to maintain consistency with provisions of the proposed Tree Preservation Ordinance. (See Exhibit D.)

Ordinance Publication: The recommended ordinance is many pages long. In order to save on publication costs, staff recommends that the Council direct publication of a summary prepared by the City Attorney rather than publication of the full ordinance. This will require that second reading and adoption of the ordinance be put off until the second Council meeting after introduction so that the summary can be prepared and published at least five days prior to ordinance adoption.

Master Fee Resolution: Staff is recommending that the Master Fee Resolution be amended to establish fees for administration of the tree protection ordinance. There will be no fee for an application to remove a tree that is not a landmark tree when no development project application for the lot is pending. However, there is provision for charging the applicant for any consultant work that may be needed to process the application. Fees for tree related matters in connection with development proposals would continue to be charged as part of the total processing fee for the project. Fees for applications not part of a development application—i.e., applications to physically damage or remove a landmark tree or to remove a landmark tree designation—will be charged at job cost with a required \$500 refundable

deposit. The applicant will pay the estimated cost of any consultant services that may be required, and any surplus will be refunded. Investigation costs for unlawful tree removal will be job costs.

Enforcement Provisions: A change is recommended to the Municipal Code's penalties provisions to establish that the main enforcers of the ordinance will be the City Landscape Architect and the Building and Safety Manager. The City's code enforcement officers will, as subordinates of the Building and Safety Manager, issue any citations required for violations of the ordinance. The proposed changes replace an obsolete designation of the Public Works Director as the official empowered to enforce the City's tree preservation regulations.

Environmental Analysis: EIA-2002-00301(GFC002), an Initial Study and Draft Mitigated Negative Declaration, was prepared and circulated for this project. The Draft Negative Declaration includes mitigation measures, which, if implemented, would reduce the identified impacts to non-significant levels. Although no extensive tree removal procedures are proposed at this time, future projects would include mitigation measures that will be applied during the removal of tree that meet the criteria identified in the revised ordinance. A more detailed description of the potential impacts is provided within the Initial Study for EIA-2002-00301, which is included as an enclosure.

A finding is proposed that this project would not have a significant effect on the environment based upon the implementation of the identified mitigation measures. On June 13, 2002 the Planning Commission recommended approval of a Draft Mitigated Negative Declaration to the City Council.

The Initial Study conducted for EIA-2002-00301 has evaluated the potential for this project to cause an adverse effect—either individually or cumulatively—on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources. Based on this finding, a Certificate of Fee Exemption will be submitted with the Notice of Determination after project approval, as required by Public Resources Code section 21089. The Certificate of Fee Exemption allows the project to be exempted from the review fee and environmental review by the California Department of Fish and Game.

Review and Collaboration of Proposed Ordinance: Staff from the Planning Division, Maintenance and Recreation Services Department, and Engineering Division collaborated to work out the parameters of a proposed ordinance. The City Council reviewed the provisions on November 6, 2001 and at a Study Session on February 19, 2002. The Planning Commission recommended approval of the Zoning Code changes, and Environmental Document on June 13, 2002.

Planning Commission Recommendation: At their regular meeting on Thursday, June 13, 2002, the Planning Commission unanimously recommended the City Council approve the Initial Study, Draft Mitigated Negative Declaration, and the proposed changes to the Zoning Code. The Planning Commission also forwarded comments regarding the Tree Preservation Ordinance as follows:

1. Make sure that the new provisions of the ordinance are publicized through the City Newsletter, Web Site and letters to tree removal companies in the area.
2. The intent and purpose of the ordinance are admirable, but the message gets lost in the extended discussion of enforcement. Make sure the intent and purpose of the ordinance are also publicized.

Staff concurs with the comments from the Planning Commission and will follow-up with a publicity program that used existing methods of communication from the City to the community.

ENCLOSURES:

- Exhibit A: Draft Tree Preservation Ordinance.
- Exhibit B: Review and approval for tree removals.
- Exhibit C: Proposed Zoning Code changes
- Exhibit D: Proposed Subdivision Ordinance changes.
- Exhibit E: Initial Study for EIA-2002-00301 (GFC-002)
- Exhibit F: Draft Mitigated Negative Declaration EIA-2002-00034 (GFC-002)
- Exhibit G: Draft resolution amending the Master Fee Schedule
- Penalties and Mitigation (Tree Replacement) Fact Sheet
- Penalty and Mitigation Comparisons with other cities

RECOMMENDATIONS:

1. Hold public hearing.
2. Find the Initial Study conducted has evaluated the potential for this project to cause an adverse effect—either individually or cumulatively—on wildlife resources. There is no evidence the proposed project would have any potential for adverse effect on wildlife resources.
3. Approve Draft Mitigated Negative Declaration and find it reflects the independent judgment of the City of Fremont.
4. Waive full reading and introduce an ordinance amending the Municipal Code to establish new tree protection regulations replacing existing ones, to amend related subdivision and zoning ordinance sections, to amend development standards relating to trees and landscaping, and to amend penalties provisions to confer tree protection ordinance enforcement power on the landscape architect and building and safety director.
5. Direct publication of an ordinance summary prepared by the City Attorney.
6. Schedule July 23, 2002 for second reading and adoption of the ordinance.
7. Adopt resolution amending Section II, Community Development Applications, of the Master Fee resolution in accordance with Exhibit G, to establish fees relating to administration of the tree protection ordinance.

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6.1 Report Out from Closed Session of Any Final Action

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7.1 NEW CITY OF FREMONT WEBSITE: www.fremont.gov
Update on new City of Fremont website, scheduled to launch on July 15

Contact Person:

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Executive Summary: The newly designed City of Fremont website will be launched on July 15, 2002. The purpose of this report is to inform the City Council of the features and capabilities of the new site: www.fremont.gov.

BACKGROUND: The City of Fremont's new, easy-to-use website has more useful information and interactive features to serve the City's diverse customers including residents, businesses, visitors, teens and seniors. The site design is based on extensive customer research through in-person surveys, focus groups, and continuous customer testing. City staff completely redesigned the site and implemented a website content management (software) system. The website content management system allows staff members throughout the organization to quickly and cost-effectively update existing information and post new information.

Design elements of popular, user-friendly sites like Amazon.com were used. The new website has a professional look and feel, and navigation is straightforward and consistent throughout the site. Staff created the website from the customer's point of view. The site is organized around topics that customers want, not the City's departmental structure as was done in the past. Staff developed these topics through extensive customer research and believes that Fremont is the first city to use this approach. The new website also has a powerful new search engine that can help customers quickly find what they need.

The new content management system gives the City website considerable flexibility and capacity for future growth. For example, it is now possible to change the visual design without having to re-enter all of the content. The system also puts the City in a good position to deliver information to wireless devices, such as Personal Digital Assistants (e.g., Palm Pilots) and cell phones, in the near future.

The new website was designed to be accessible for persons with disabilities. The new website meets industry standards for accessibility, set by the World Wide Web Consortium.

Starting July 15, the City will market a new website address that is easy to identify – www.fremont.gov. The old website address, www.ci.fremont.ca.us, will also direct customers to the new website.

ENCLOSURE: 5 screen shots of new website

RECOMMENDATION: Receive report.

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7.2 DOUBLE WOOD GOLF COURSE OPEN SPACE EASEMENT
To Provide Direction on Open Space Easement on City-Owned Land Easterly of Avalon
Homes Development for Double Wood Golf Course (Double Wood Golf Course
PLN 2002-00273)

Contact Person:

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Executive Summary: Double Wood Golf Course was approved as a planned district in 1996. Since that approval, Double Wood has sought the approval of other public agencies having jurisdiction over the project. A condition imposed by the U.S. Fish and Wildlife Service (USFWS) requires an open space easement on 36 acres of City-owned property easterly of the Avalon development for a potential habitat for the red-legged frog. This report discusses elements that should be included as part of the easement and seeks Council's approval to develop an open space easement that would relieve the City of any responsibility for developing, maintaining or monitoring the area as a habitat or buffer area. Because of the property's steep topography and remoteness, the City plans to maintain the site as open space. The proposed use as a habitat and buffer area for the red-legged frog would be consistent with the City's planned open space use. If the City Council approves the open space easement concept, staff will work with Double Wood and USFWS in drafting an easement agreement for approval by the City Manager.

BACKGROUND: On May 23, 1995, the City Council approved a planned district amendment (P-90-9H) to allow consideration of a golf course on the subject property. On July 9, 1996, the City Council approved Double Wood's proposed amendment to the Planned District, P-90-9 (I), for the 18-hole golf course.

On October 11, 2001, the Planning Commission approved a preliminary grading plan and minor amendments to the Planned District to reflect changes resulting from requirements of the State Water Resources Control Board. (PLN 2001-00360) On June 27, 2002, the Planning Commission recommended a development agreement between Double Wood Golf Course LLC and the City of Fremont. [verify] Double Wood was also required to obtain approvals from the California Department of Fish and Game, U.S. Army Corps of Engineers and the U. S. Fish and Wildlife Service. One of the Wildlife Service's conditions of approval, an open space easement over City-owned property, is the subject of this report.

Open Space Easements: The USFWS requires two open space easements for the Double Wood golf course. One easement would cover approximately 225 acres of the Double Wood property not occupied by golf course operations. The other easement would cover approximately 36 acres of the more than 1000 acres that were dedicated to the City as open space by Mission Peak Company, the developers of the Avalon residential project. (An exhibit showing the location of the City property and the approximate location of the ponds is enclosed in Council packets.) This easement would surround two

man-made ponds (each approximately .05 acres in area) on City-owned lands easterly of the Avalon residential development. The two ponds were required by the City as experimental habitat for the California tiger salamander when the golf course was approved in 1996 (no breeding has taken place at these ponds according to a monitoring survey dated February 2002). The easement now required by the Service would make the ponds and the surrounding area habitat for the red-legged frog as well as the salamander.

The property currently is leased to a rancher for cattle grazing. The lease, effective on October 1, 1999, is for five years, with an option to extend the lease another five years. The lease would not be affected, as grazing would be allowed under the proposed easement.

The ponds are about 1200 feet above sea level and in a remote area with steep slopes. Because of area's remoteness and topography, the area is expected to remain as open space (i.e., no intensive recreational use is contemplated). Grazing is expected to remain the primary open space use. If in the future a trail is desired to connect the Rancho Higuera Adobe area to Toroges Creek and Mission Peak, the trail connection would be located below the site.

Components of the Easement on City Property: The open space easement on the City property is required to be designed to provide a 300-foot upland dispersal habitat and 300-foot buffer around the perimeter of the ponds. A third party land trust organization (approved by the USFWS and California Department of Fish and Game) would hold the easement and Double Wood would be responsible for financing the development and maintenance of the area in conformance with the provisions of the easement agreement. Prohibited activities in the easement include:

- Leveling, grading or any other alterations of existing topography;
- Placement of new structures on the property;
- Discharge, dumping, burning, or storing of rubbish, garbage, grass clippings, dredge materials, household chemicals or any other wastes or fill materials;
- Building of new roads or trails
- Killing, removal, alteration or replacement of any existing native vegetation except as approved by the Service;
- Activities that may alter the hydrology of the preserve and associated watersheds;
- Incompatible fire protection activities;
- Use of pesticides and other materials that can contaminate the preserve;
- Introduction of any exotic species.

These prohibitions are consistent with the open space designation of the property and should not conflict with the City's interest in retaining the open space character of the property.

City Interests: In developing the open space easement document, City interests must be protected. Those interests include:

- Development, maintenance and monitoring of the habitat must not be the responsibility of the City (Double Wood will be responsible for financing the development and maintenance of the habitat; a land trust organization will be responsible for actual maintenance and monitoring of the site);

- Indemnification for any claims, damages or liability related to the habitat;
- The right to initiate fire protection activities, including grazing.

ENCLOSURE: Exhibit A: Informational exhibit showing location of City property and the ponds.

RECOMMENDATION: Authorize the City Manager to: negotiate an open space easement with Double Wood Golf Course LLC, the United States Fish and Wildlife Service (USFWS) and the Department of Fish and Game (Fish & Game), for approximately 36 acres of open space on the property described in Exhibit A, consistent with the terms and conditions set forth in this report; and execute a grant of open space easement to a third party land trust organization approved by the USFWS and Fish & Game consistent with these terms and conditions.

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7.3 DRIVE-THROUGH RESTAURANT REGULATIONS

Request for Council Direction on Whether to Undertake Changes in the Zoning Ordinance in Relation to Drive-Through Restaurants

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Executive Summary: On May 14, 2002, in response to a request from Jay Waste of the Centerville Coalition, the City Council directed that staff provide Council with an analysis of the current regulations pertaining to drive through facilities for restaurants. This report responds to that request.

Analysis: As described below under “Zoning Regulations,” drive-through facilities are only “permitted” (i.e., no discretionary review by the Planning Commission) in one relatively small district in the City (regional commercial). In all other areas of the City, they are either prohibited or subject to receiving a Conditional Use Permit (CUP). Staff’s evaluation as to the appropriateness of a specific location for a Conditional Use Permit for a drive-through focuses on conformance with the policies of the General Plan and the regulations of the Zoning Ordinance. These are described below:

General Plan: The following are the relevant General Plan policies on fast food and drive-through restaurant facilities in various commercial districts, with specific references to drive-through restaurants in **bold**:

— *Central Business District*

Drive-through restaurants shall not be allowed (Policy LU 2.4).

— *Community Commercial Center* (Centerville, Irvington, Warm Springs, Niles, MSJ, Mowry East)

Land Use Policy LU 2.11	. . . Fast-food type restaurants are allowed to the degree they can be incorporated into the character of a pedestrian-oriented commercial center. Drive-through restaurants are discouraged unless the drive-through can be oriented so as to be compatible with the visual character and pedestrian orientation of the area. [emphasis added]
Land Use Policy LU 2.14	A CCC [Community Commercial Center] should be a pedestrian-oriented commercial environment. To maintain an active pedestrian environment, buildings oriented toward sidewalks or public plazas and walkways shall be strongly encouraged. Retail uses shall be encouraged at the ground level.

Land Use Policy LU 2.15	Community Commercial developments shall provide safe, convenient and continuous pedestrian walkways linking building entrances to street sidewalks and crossings, and linking building entrances to adjacent building entrances and activity centers where appropriate.
Land Use Policy LU 2.17	Each of the four historic commercial centers shall be oriented toward pedestrians to the degree feasible. New development should strengthen the “Main Street” character of these areas. Projects should be planned to create active pedestrian frontages oriented towards sidewalks, streets or, when appropriate, towards a public plaza.
Land Use Policy LU 2.18	Where appropriate, buildings shall be oriented toward the street and sidewalk. Whenever feasible, parking should be at the rear of buildings or in joint parking areas rather than in front of buildings and businesses.
Land Use Policy LU 2.19	New development projects should be integrated with existing development in regards to design, scale and character. Existing street trees and landscaping should be conserved.

– *Neighborhood Commercial*

Land Use Policy LU 2.23	Drive-through restaurants are discouraged unless the drive-through can be oriented so as to be compatible with the character and pedestrian orientation of the shopping area. (emphasis added)
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– *Thoroughfare Commercial*

Land Use Policy LU 2.32	Thoroughfare Commercial uses shall be designed to be compatible with surrounding uses and/or compatible with the design theme of a district or planning area.
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– *High-Volume Retail*

Drive-throughs are not prohibited, but no specific General Plan policies apply.

– *Office Commercial*

No restaurants are allowed.

The following General Plan goals and policies are potentially applicable to drive-through restaurants in any type of commercial area:

Local Economy Goal LE 3	A hierarchy of well-defined, vital commercial areas meeting the retail shopping, entertainment and service needs of Fremont residents
Housing Goal H 1	Conservation and enhancement of existing residential neighborhoods
Health and Safety Policy HS 8.1.2	<p>Protect the noise environment in existing residential areas. In general, the City will require the evaluation of mitigation measures for projects under the following circumstances:</p> <ul style="list-style-type: none"> • The project would cause the L_{dn} to increase by 3 dB(A) or more • An increase would result in an L_{dn} greater than 60 dB(A) • The L_{dn} already exceeds 60 dB(A) <p>The project has the potential to generate significant adverse community response.</p>

Zoning Regulations: The following table shows the districts in which fast-food and drive-through restaurants are permitted (of right), require a zoning administrator permit, a conditional use permit or are prohibited:

Zone	Zoning District Name	Fast Food Restaurant	Drive-Through
C-O	Administrative Office	Prohibited	Prohibited
C-N	Neighborhood Commercial	Permitted Use	Conditional Use – but not allowed in an (H) Historical Overlay District
C-C	Community Commercial	Permitted Use	Conditional Use – but not allowed in an (H) Historical Overlay District
C-B-D	Central Business District	Zoning Administrator Permitted Use	Prohibited
C-T	Thoroughfare Commercial	Permitted Use	Conditional Use
C-R	Regional Commercial	Permitted Use	Permitted Use
I-L	Industrial	Zoning Administrator	Prohibited

I-R G-I		Permitted Use (must be in structure of at least 5,000 square feet)	
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There are no special provisions establishing design or locational standards for drive-through facilities. Article 27 of the Zoning Ordinance (Site Plan and Architectural Approval) includes the following language, similar to that in the General Plan, for C-C Community Commercial District:

- (4) Applications for projects including automobile services, drive-in services, fast food, hotels, motels or lodging places shall meet the following requirements:
 - a. The use shall be integrated into the visual character and pedestrian environment of the C-C district.
 - b. The project shall be consistent with the scale and character of the C-C district.

In addition, all eating places have a provision requiring an odor-control system when they are located near a residential district (Sec. 8-22140).

Currently, “drive-in” and “drive-through” are synonymous terms in the Zoning Ordinance with respect to restaurants. In the Zoning Ordinance, “drive-in eating place” means an eating place which:

- (1) *has less than fifty percent of the floor area of the total structure devoted to indoor seating, and which services food and/or drink from throw-away plates, wrapping or cups;*
or
- (2) *serves food from a pass-through opening to vehicles; or*
- (3) *serves food to parked vehicles.*

Establishments selling prepared food for exclusive consumption off the premises shall not be considered as drive-in eating places on the basis of seating but may be considered as drive-in eating places on the basis of a pass-through opening or service to parked vehicles (Sec. 8-2139).

Fast-food restaurant is defined as:

Any retail establishment intended primarily to provide food service for off-site dining (with limited or no table service) and/or take-out food service, including self-serve restaurants (excluding cafeterias where food is consumed on the premises), and franchise restaurants required by contract or other arrangement to offer standardized menus, ingredients and fast-food preparation (Sec. 8-2142.8).

Staff Analysis of Current Regulations and Policies: Current regulations prohibit drive-through restaurants in the Central Business District and historic districts (Niles and portions of Mission San Jose

and Centerville). Although the General Plan language indicates they are “discouraged” in Community Commercial areas (portions of Centerville, Irvington, Mission San Jose Irvington and Mowry East) and in Neighborhood Commercial areas (scattered throughout the City), they are allowed by CUP. The General Plan refers to these restaurants being compatible with a “pedestrian-oriented” commercial area. It is very difficult to make a “drive-through” restaurant design be pedestrian oriented because they usually require large drive aisles on two or three sides of the building, and parking on the remaining sides. At best, one side of the building can be somewhat street-oriented and therefore have some pedestrian orientation. Neither the current ordinance nor the General Plan address the following issues which often arise in regard to drive-through facilities:

1. Proximity to residential uses. Most drive-through operators want extended hours and, by their nature, tend to generate noise and activity which can disturb nearby residences.
2. Concentration of drive-throughs. The City currently has no regulations limiting how many drive through restaurants can be located in any particular area. Most cities have one or more “fast-food rows”: conglomerations of drive-through fast-food restaurants along a major boulevard. Fast-food restaurants with drive-throughs tend to congregate where automobile traffic is heaviest. According to several operators staff has spoken to in the past, the drive-through portion of a fast-food restaurant has become a critical element of the business. Some people consider these “fast-food rows” to be visual blight and are concerned that they homogenize communities so that they lack a sense of identity and discourage other types of uses which cannot compete with large chains for these highly visible sites.
3. Relationship to Redevelopment areas. The City’s current regulations on drive-through restaurants do not take into account the boundaries of the City’s redevelopment areas. The Redevelopment Agency has proposed to spend millions of dollars on creating “pedestrian-friendly” developments. Drive-through fast-food restaurants would currently be allowed with a Use Permit immediately adjacent to and/or across the street from two of these redevelopment sites. As noted above, it is very difficult to make drive-through facilities enhance a pedestrian environment or contribute to the unique historic character of the districts in which these redevelopment projects are located.
4. Design. Although drive-through restaurants are expected to be “pedestrian oriented” in Community commercial areas, there is little guidance as to what standards the City may hold an applicant to in meeting that General Plan policy direction.
5. Litter. Drive-through restaurants tend to generate a significant amount of litter due to the nature of the use which involves taking food away in paper and plastic containers, a portion of which are left scattered throughout the community.

Staff believes that should the Council wish to address these or other issues, that it direct staff to research other communities’ approach to drive-throughs and consider revised regulations in regard to the issues described above or other issues identified by the Council. Staff would recommend that such an analysis be given a “medium” priority, meaning that the work would be undertaken as time allowed, but would be completed in the next six to nine months. Staff costs are estimated at roughly, \$10,000-\$15,000.

ENCLOSURE: None.

RECOMMENDATION: Direct staff to undertake preparation of revised regulations on Drive-Through Restaurants pursuant to the issues described in this report.

7.4 CABLE FRANCHISE CHANGE OF CONTROL

Consideration of Request by the Franchisee, TCI Cablevision of California, Inc., for the City's Consent to a Change of Control of the Fremont Cable Franchise from AT&T Corp to AT&T Comcast Corp; and Hearing to Consider the Franchisee's Compliance with the Fremont Cable Franchise Requirements

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Executive Summary: Cable services are currently provided to customers in the City by TCI Cablevision of California, Inc. ("Franchisee") pursuant to the City's grant of a nonexclusive cable franchise to the Franchisee. There are currently two sets of interrelated cable franchise issues for City Council's consideration: (1) the Franchisee's request for consent to transfer corporate control from AT&T Corp ("AT&T") to a proposed new parent corporation, AT&T Comcast Corporation ("AT&T Comcast"); and (2) the Franchisee's offer to settle outstanding franchise noncompliance issues, primarily related to customer service and underpaid franchise fees.

Due to the timing requirements imposed by federal law, the City Council is required to consider the Franchisee's request to transfer corporate control by July 9, 2002. However, at the time this report is being prepared, staff is continuing ongoing negotiations with representatives of the Franchisee in an effort to work out an acceptable settlement of outstanding franchise noncompliance issues. Therefore, staff will supplement this report prior to the City Council meeting in order to update the status of negotiations with the Franchisee, and to recommend action to be taken by City Council.

BACKGROUND:

Existing Cable Franchise Documents: On February 8, 1994, the City granted a nonexclusive franchise to TCI Cablevision of California, Inc. ("Franchisee") to install, maintain, and operate a cable communications system within the City. The franchise provided for an initial ten-year term, with one five-year option (which was approved by the City in 1999). Thus, the franchise will expire on February 8, 2009. In 1999, the City also consented to the Franchisee's request to transfer corporate control from "Tele-Communications, Inc." to AT&T Corp ("AT&T"). Therefore, the "Cable Franchise Documents" include all documents approved by the City Council for the initial grant of franchise in 1994, as well as the change of control to AT&T in 1999.

Request for Consent to Change Corporate Control: On February 27, 2002, the City received the Franchisee's request (known as an "FCC Form 394") for the City's consent to change corporate control from AT&T to AT&T Comcast Corporation ("AT&T Comcast"). The Franchisee's request is based upon a proposed merger between the Franchisee's existing parent corporation, AT&T, and Comcast, to form AT&T Comcast. The proposed merger is currently under review at the federal level by the Federal Communications Commission ("FCC"), the Securities and Exchange Commission ("SEC"), and the

Department of Justice (“DOJ”). The proposed merger will also be subject to shareholder approval. According to Franchisee representatives, the proposed merger is expected to receive final approval sometime between October 2002 and March 2003.

If the merger is approved, the resulting AT&T Comcast will be the largest cable service provider with over 22 million cable subscribers, combining approximately 13.6 million cable subscribers from AT&T (including approximately 45,000 subscribers in the City of Fremont) with 8.5 million subscribers from Comcast. The structure of the proposed merger is complex, involving the creation of several intermediary holding companies and acquisition companies. However, in essence, AT&T will first “spin-off” its cable services division (“AT&T Broadband”), and AT&T Broadband will merge with Comcast to form AT&T Comcast. Thus, after the merger is complete, AT&T will continue to provide noncable services, such as telephone; and all cable services previously provided by Comcast and AT&T (including cable services in the City of Fremont) will be provided under the corporate umbrella of AT&T Comcast.

Scope of City’s Review of Request for Consent: The Cable Franchise Documents require the Franchisee to obtain the City’s approval prior to a change of corporate control. Under the requirements of the Cable Franchise Documents, the City is required to examine AT&T Comcast’s “legal, financial, technical, character and other qualifications” to determine whether AT&T Comcast “is fully capable of performing all requirements of the Franchise...” In analyzing AT&T Comcast’s qualifications and capabilities to perform in accordance with the Franchise Documents, City staff necessarily examined the current status of the Franchisee’s compliance with the requirements of the Cable Franchise Documents, since (in its requests for consent to the change of control) the Franchisee represented that it will continue to be bound by its obligations under the Franchise “in the same manner as before the merger.” Thus, staff’s analysis of the request for consent to transfer corporate control to AT&T Comcast focused on two separate but interconnected issues: (1) the qualifications and capabilities of AT&T Comcast, and (2) the current compliance of the Franchisee in accordance with the requirements of the Cable Franchise Documents.

Discussion:

Qualifications and Capabilities of AT&T Comcast: In analyzing the complexities of the legal, technical, and financial qualifications and capabilities of AT&T Comcast, staff has obtained analyses from special counsel hired by the City, as well as analyses performed by other cable industry experts. The City hired special counsel, Miller & Van Eaton, a nationally recognized law firm (with offices in Washington D.C. and San Francisco) with expertise in cable and telecommunications issues, to advise the City regarding the proposed transaction between AT&T and Comcast. Due to the number of local agencies which Miller & Van Eaton represents throughout California and across the nation, the City was able to obtain access to information which would have otherwise been much more difficult to gather. The City also obtained and considered detailed reports prepared on behalf of other public agencies, as summarized in this report.

Legal Qualifications: Based on information available at the time of writing this report, City staff has not identified any basis for challenging the legal qualifications of AT&T Comcast to provide cable services in compliance with the Franchise Documents. This conclusion is based on the assumption that AT&T Comcast will first obtain all necessary approvals for the proposed merger (such as approval from the

FCC, SEC, DOJ, and shareholders). If the City Council approves the consent to transfer corporate control, the approval could be conditioned upon, and not effective until, AT&T Comcast obtaining all necessary approvals for the proposed merger.

Technical Qualifications: Based on information available to at the time of writing this report, assuming that the Franchisee successfully satisfies outstanding noncompliance issues (outlined below), City staff has not identified any basis for challenging the technical qualifications of AT&T Comcast to perform in accordance with the Franchise Documents. AT&T Comcast will essentially be managed and controlled by the current management of Comcast. The current president of Comcast, Brian Roberts, will be the chief executive officer of AT&T Comcast. Industry analysts conclude that it will be very difficult for Mr. Roberts to be removed as CEO, based upon Mr. Roberts' control of one-third of the voting stock of AT&T Comcast, and the "atypical governance structure" requiring the approval of 75% of the entire AT&T Comcast board to remove him from office prior to April 2010.

Industry experts identify the successes of Comcast's management team, specifically Brian Roberts and Stephen Burke (current President of Comcast Cable), as an indication that AT&T Comcast will be under strong leadership. Although there is anecdotal evidence indicating both positive and negative experiences in communities served by Comcast, the positive evidence outweighs the negative. Comcast is a family owned and operated cable company, founded in 1969 by Brian Roberts' father and current Comcast chairman, Ralph Roberts. As the third largest cable service provider in the United States, Comcast has a reputation of providing responsive customer service, system upgrades, and deployment of new services.

Financial Qualifications: The financial qualifications of AT&T Comcast have received significant scrutiny by various industry experts throughout the nation. Thus, City staff has considered the analyses and conclusions set forth in the following reports: (1) "Report to the San Mateo County Telecommunications Authority Regarding the Proposed Transfer of Control of AT&T Corporation to AT&T Comcast Corporation," dated May 23, 2002, prepared by Moss & Barnett; (2) "Report Regarding a Review of the Legal, Financial and Technical Qualifications of AT&T Comcast Corporation in Connection with the Application for Franchise Authority Consent to Transfer Control of the Cable Television Franchise from AT&T Corp to AT&T Comcast Corporation," dated May 28, 2002, prepared by The Baller Herbst Law Group; and (3) "Review of the Proposed Merger of AT&T Broadband, Inc. and Comcast Corporation to form AT&T Comcast Corporation," dated May 24, 2002, prepared by Ashpaugh & Sculco, CPAs, PLC (with incorporated report entitled "AT&T Comcast Transfer Application Report," dated May 30, 2002, prepared by Creighton Bradley & Guzzetta, LLC.

Current Compliance with Franchise Requirements: As identified above, as a part of the legal, technical, and financial qualifications of AT&T Comcast, staff also analyzed the Franchisee's current compliance with the requirements of the Cable Franchise Documents. Staff identified three areas of noncompliance: (1) failure to meet customer service standards; (2) underpayment of franchise fees from 1994 to 1998, based on an audit; and (3) threatened failure to pay franchise fees for cable modem (internet) services. Enclosed with this report are copies of two letters. The first is the City Manager's letter to the Franchisee dated May 6, 2002, which summarizes the notice of noncompliance issues. The second is the Franchisee's response letter dated June 6, 2002.

Failure to meet customer service standards: Among other customer service requirements set forth in the Cable Franchise Documents, the Franchisee is required to answer 90% of all calls for service within 30 seconds. Additionally, the Franchisee is required to provide specific information to the City in regular reports, summarizing the Franchisee's customer service record. Although the Franchisee failed to provide complete data to the City regarding customer service records in 2001, the data provided indicated that the Franchisee answered approximately 67% of calls for cable video service within 30 seconds.

After staff notified the Franchisee of these problems, the Franchisee recognized that it had a problem in meeting call response requirements in 2001, as well as the first quarter of 2002. The Franchisee claimed that the call response problems were the result of its transitional efforts to improve service at its call centers, that additional staff had recently been hired and trained, and that the City should expect improved call response data. In fact, the Franchisee has provided data for April and May 2002 which indicates that call response times have improved to approximately 94% answered within 30 seconds.

The Franchisee has offered, for the future, to provide additional data to assist the City's monitoring of customer service responsiveness. The Franchisee has also offered to include these additional data requirements, along with expedited penalty provisions to be assessed against the Franchisee for failure to perform, as terms of the proposed Settlement Agreement between the City and the Franchisee. However, at the time this report is being prepared, City staff has not concluded its negotiations of the proposed Settlement Agreement.

Underpayment of franchise fees based on audit: In 1998, the City hired an independent auditor, CTIC Associates ("CTIC") to audit the Franchisee's franchise payments for the years 1994 through 1998. The 1998 audit indicated that the "gross revenue" on which the Franchisee based its franchise fee payment failed to account for, among other things, a portion of advertising revenue. Although the City's audit estimated an underpayment in the principal amount of approximately \$100,000, this was based in part on an extrapolation of data due to incomplete records provided by the Franchisee. After discussions regarding the disputed interpretation of "gross revenue," and the bases for extrapolating the data, the Franchisee has offered to settle this issue with a payment to the City. However, again, the terms of the proposed Settlement Agreement have not yet been finalized.

Failure to pay franchise fees for cable modem services: In 1999, when the City approved the transfer of control from Tele-Communications, Inc., to AT&T, the City specifically negotiated a clause in the Change of Control Agreement by which cable modem internet services were included in the definition of "cable services." Thus, the Franchisee's obligations under the Cable Franchise Documents to comply with customer service standards, and to pay a franchise fee based on 5% of gross revenue, included all "cable services" (cable television and cable modem over the internet).

In June 2000, the City's ability to regulate cable modem internet services was called into question by the United States Court of Appeals for the Ninth Circuit, in AT&T Corp. v. City of Portland (2000), 216 F.3d 871. In that case, the court held that the City of Portland could not require AT&T to provide open access to its cable system to competitors, as a condition of a transfer of corporate control of a cable franchise agreement. The court's decision was based in part on a conclusion that cable modem internet services are a "telecommunications" service as opposed to a "cable" service. Based on the AT&T case, the Franchisee has argued that it is not bound by the customer service standards of the Cable Franchise

Documents for cable modem internet services. Additionally, effective March 15, 2002, the Federal Communications Commission (“FCC”) issued a ruling which concludes that cable modem internet services are not a “cable service,” but are rather an “information service.” Based on the FCC ruling, the Franchisee has notified the City of its intention to stop paying franchise fees on the portion of its gross revenues related to cable modem internet services.

There is currently an ongoing good faith dispute between the City and the Franchisee regarding the impact of the AT&T case and the FCC ruling, given the language of the Cable Franchise Documents which specifically include cable modem internet services in the definition of “cable services.” However, since the FCC ruling is currently being appealed in various federal venues, including the Ninth Circuit Court of Appeals, staff recommends that the City reserve its rights regarding the interpretation of the definition of “cable services,” pending further resolution of this issue at the federal level.

Community Focus Group Meeting on AT&T: On June 20, 2002, City staff hosted a focus group meeting to facilitate discussion between Fremont customers, the City, and AT&T on AT&T’s request for a transfer of control. 17 Fremont subscribers, 5 City staff, and 6 AT&T representatives attended the meeting. The purpose of the meeting was to provide Fremont customers an opportunity to ask questions and express concerns regarding AT&T’s service and allow the City to clarify its role in reviewing the transfer of control.

Several positive outcomes resulted from the meeting. Listening to the customers’ concerns helped City staff better understand the primary problems affecting customers. The focus group helped establish the need for an annual meeting to collect customer service information in preparation for the 2009 Cable Franchise Renewal. Furthermore, the meeting provided customers with a better understanding of what the City can and cannot regulate.

Since the City has the authority to regulate customer service, the majority of the meeting was devoted to discussing the problems with AT&T’s service. In general, Fremont subscribers attending the meeting identified concerns with the length of time it takes for customer calls to be answered, the length of time customers wait on hold, the ineffectiveness of the second tiered customer service support, and the inconvenient scheduling of appointments for service and installations. In addition, they expressed concerns regarding cable rates, programming, and Internet cable modem. An enclosure to this report summarizes the comments and input from Fremont subscribers who attended the meeting.

Timing of City’s Consideration of Request for Consent: Procedurally, the regulations of the Federal Communications Commission (“FCC”) require the City to take action on the Franchisee’s request for consent to transfer corporate control within 120 days after the City’s receipt of a complete application from the Franchisee, unless extended by the Franchisee. City staff has taken the position that the Franchisee failed to submit a complete application. Thus, it is staff’s position that the federal deadline for action has not yet commenced. However, the Franchisee claims that its application was complete upon its filing on February 27, 2002. Since federal law provides that a failure by the City to act within the 120-day period is deemed to be a consent by the City, City staff has erred on the side of caution, and brought this action for Council’s consideration prior to the deadline, as extended by the Franchisee. Assuming the commencement date of February 27, 2002, the original deadline of June 27, 2002, was extended by the Franchisee until July 10, 2002.

ENCLOSURES:

- City Manager's report of noncompliance letter dated May 6, 2002
- Franchisee's response to noncompliance letter dated June 6, 2002
- Summary of Community Focus Group Meeting

RECOMMENDATIONS:

1. Open hearing for comments.
2. Close hearing.
3. Consider adoption of a resolution to either consent (subject to conditions) or deny the Franchisee's request to change corporate control of the Cable Franchise Documents from AT&T Corp to AT&T Comcast Corporation, with corresponding authority to the City Manager to execute a Change of Control Agreement with the Franchisee and AT&T Comcast Corporation.
4. Consider taking action on the City Manager's report of past franchise noncompliance issues related to customer service and underpaid franchise fees, including the consideration of appropriate remedies and the potential approval of a Settlement Agreement.

7.5 UPDATE ON TRADE MISSION

Update on City of Fremont Trade Mission to Taiwan and the People's Republic of China 2002

Contact Person:

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Executive Summary: On January 15, 2002, the Fremont City Council approved funding for a trade mission to be held in conjunction with the Academy of Chinese Performing Arts (ACPA) cultural exchange to Taiwan and the People's Republic of China (China) from July 27 through August 11, 2002. This report provides an update on the trade mission preparations and itinerary.

BACKGROUND: The trade mission delegation consists of the Mayor, Councilmember Cho, the City Manager, and the Marketing and Communications Coordinator. In addition, the City Council invited Catellus Development Corporation Senior Vice President Dan Marcus to further promote Fremont's favorable business climate and the research and development space currently available at the Pacific Commons business park. The City has also invited Economic Development Advisory Commission (EDAC) member Henry Yin to participate in the delegation, at his own expense, as a representative of EDAC and because of his familiarity of the Chinese business culture, his extensive overseas business contacts, and his fluency in both spoken and written Mandarin.

The delegation will meet with overseas Fremont-based companies, companies who have ongoing partnerships with Fremont businesses, and companies looking to expand in the United States. Such visits are vital for establishing and nurturing relationships which can attract new companies, encourage further investment and prevent or minimize disinvestment. Additionally, the delegation will meet with a number of government officials. These meetings are especially important in China as much of the country's economic planning is carried out by the central government.

In the cities of Hsinchu, Taiwan; and Beijing and Shanghai, China, the City will host afternoon receptions for business leaders and government officials. These receptions will include a formal presentation given by the delegation to highlight Fremont to ensure that Fremont is known by these decision-makers as a destination of choice. The expected attendance at each of these receptions/presentations is 30-35 business representatives. After the presentation, the delegation will have an opportunity to talk directly with the business representatives and answer any questions they may have regarding Fremont's favorable business climate. Additionally, EDAC Member Henry Yin, and Catellus Senior Vice President Dan Marcus can share their personal experiences as Fremont business owners and business leaders interacting with the Fremont business community.

The delegation will also work to improve the access of Fremont businesses to overseas markets in Taiwan and China through its meetings and interactions with government officials and business leaders. The City of Fremont anticipates this year's Taiwan and China trade mission will be the first in a continuing series to raise the awareness of Fremont as an ideal business location and to serve as advocates for Fremont businesses. As with past trade missions, the measure of the trade mission's success is the strengthening of existing relationships and raising the awareness of Fremont as the ideal location in Silicon Valley in which to do business. Because China is new territory for City officials, this trip is aimed at establishing relationships that the City can continue to nurture in the future.

Trade Mission: Staff is collaborating with the California Technology, Trade and Commerce Agency (CTTCA) in developing a schedule for the trade mission portion of the trip to Taiwan and China. The CTTCA supports the City of Fremont's trade mission to Taiwan and China given the importance of those regions to economic objectives of the State of California and regional high-tech businesses. The CTTCA has staff in Taiwan and China who are experts in the field and are working to provide appropriate contacts in both Taiwan and China through their overseas offices in both countries. Their staff also has expertise in protocol and will be able to advise the City in its interactions with the governments in these countries.

China ranks as California's eighth largest export partner, and recently has been recognized on a national level as an increasingly important trading partner when President Bush granted the country normal trade status effective January 1, 2002 as part of China's entry into the World Trade Organization. Additionally, Taiwan, the world's 14th-largest trading economy, formally joined the World Trade Organization on January 1, 2002, further elevating its international status.

Itinerary: This trade mission will be the first Fremont-only trade mission, organized by and for Fremont officials for the exclusive purpose of promoting Fremont's objectives. The trade mission itinerary includes travel to and within Taiwan and China. The trade mission itinerary is scheduled to coordinate with the ACPA's cultural exchange trip, and will include up to three official dance performances at which the City of Fremont delegation has been invited to attend and formally represent Fremont.

Fremont is recognized by companies in Taiwan and enterprises in China as an attractive area in which to locate businesses, and within which to establish mutually beneficial partnerships. While in Taiwan, the trade mission will focus on meetings with businesses, government officials, organizations and associations in the cities of Taipei and Hsinchu. Staff research shows that approximately 31 companies in Fremont, which include Lam Research, e21Corp, and Far East National Bank, have business affiliations and/or working relationships with cities in Taiwan.

Additionally, at least 11 high-tech companies in Fremont have business affiliation and/or working relationships with cities in China. These companies include PrediWave, Flash Electronics, Centillum, Fuji Electric, AMAX, and Logitech. Because the City has never sent a delegation to China, it will be important for this trade mission to include meetings with businesses and government officials to ensure that Fremont is known by these decision-makers as a destination of choice for their next business venture. Moreover, these meetings will give the Fremont delegation an opportunity to work on key objectives on behalf of local companies in forging stronger ties with the overseas organizations with whom they work.

In August 2001, officials from Xi'an, China selected Fremont for a one-day in-bound trade mission, meeting with Fremont officials, Silicon Valley businesses, officials from CTTCA and others, as part of their effort to establish business relationships in the U.S. To further foster this established relationship with Xi'an government officials, the delegation will visit the City of Xi'an, China. In confirming the logistical details for the visit with Xi'an government officials, they have already made extensive plans to receive Fremont's delegation with a full itinerary of significant meetings and activities.

2002 City of Fremont Asia Trade Mission Tentative Itinerary:

Date: Monday, July 29 – Taipei, Taiwan
Activity: Meet with CTTCA/COTI Director Steven Ling and Deputy Director Irene Tsai.
Meet with Taiwan Vice President Annette Lu.
Meet with Joseph Sun of e21Corporation.
Meet with Chairman Paul Lo of Bank SinoPac and Far East National Bank.
Conduct press interviews with Taiwan business publications.
Meet with Taipei Mayor Ying-jeou Ma.
Attend official ACPA Dance Performance.
Attend reception hosted by Taipei Mayor Ma.

Date: Tuesday, July 30 – Hsinchu, Taiwan
Activity: Travel to Hsinchu Science-based Industrial Park.
Meet with Hsinchu Mayor Lin and Hsinchu Science Park Administrators.
Host presentation and luncheon for high-tech and biotech companies, and government officials.
Attend welcome dinner hosted by Legislator C.T. Chang and officials.

Date: Wednesday, July 31 – Taipei, Taiwan → Beijing, China
Activity: Delegation departs Taiwan at 12:20 p.m.
Delegation arrives in Beijing at 6:15 p.m.

Date: Thursday, August 1 – Beijing, China
Activity: Meet with CTTCA staff.
Meet with government officials.
Attend dinner meeting with Rose Li of Far East National Bank.

Date: Friday, August 2 – Beijing, China
Activity: Host presentation and reception for high-tech and biotech companies.
Attend official ACPA Dance Performance.

Date: Sunday, August 4 – Beijing → Xi'an, China
Activity: Delegation departs Beijing at 12:20 p.m.
Delegation arrives in Xi'an at 1:55 p.m.
Meet with government officials.
Dinner with Mr. Wang Yi, Vice President of Xi'an Municipal Bureau of Foreign Trade & Economic Cooperation.

Date: Monday, August 5 – Xi'an, China
Activity: Visit Xi'an High-tech Industrial Development Zone.
Lunch with Mr. Zhang Longhu (Vice Mayor of High-tech Industrial Development Zone).
Meet with representatives of Xi'an high-tech companies.
Dinner with Xi'an Mayor Sun Qingyun.

Date: Tuesday, August 6 – Xi'an, China
Activity: Lunch with Xi'an government officials.
Visit Xi'an Economic and Technological Development Zone.
Dinner with Xi'an Vice Mayor Yao Yinliang and Mr. Wen Changsheng.

Date: Wednesday, August 7 – Xi'an → Shanghai, China
Activity: Delegation departs Xi'an at 10:05 a.m.
Delegation arrives in Shanghai at 11:50 a.m.
Orientation.

Date: Thursday, August 8 – Shanghai, China
Activity: Meet with CTTCA staff.
Meet with government officials.
Host presentation and reception for high-tech and biotech companies.

Date: Friday, August 9 – Suzhou, China
Activity: Tour Flash Electronics Suzhou facility.
Lunch with government officials and Mayor of Suzhou.
Visit AMAX / CHINAnUSA office in Suzhou.
Dinner with Flash Electronics executives.

Date: Saturday, August 10
Activity: Attend official ACPA Dance Performance.

Date: Sunday, August 11
Activity: Delegation departs Shanghai at 11:30 a.m.
Delegation arrives in San Francisco at 7:30 a.m.

Budget/Estimated Expenses: The ACPA performing tour group will be responsible for all its own expenses. The City of Fremont will pay the business expenses of participating Councilmembers and

staff. Henry Yin will be responsible for his expenses and Catellus Development Corporation will be responsible for the business expenses of its representative, Dan Marcus. The total expense per person, including airfare and accommodations, is estimated between \$4,400 - \$5,000 for the trip. Any spouses that participate will be responsible for all their own expenses.

ENCLOSURE: None

RECOMMENDATION: Receive and comment.

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7.6 FIRE SAFETY BOND MEASURE

City of Fremont Special Municipal Consolidated Election, Tuesday, November 5, 2002 for the City Sponsored Fire Safety Bond Measure Relating to General Obligation Bonds

Contact Person:

Name: Lynn Macy
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Dept.: City Manager
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Executive Summary: On June 25, 2002, the City Council set in motion the general municipal consolidated election for Tuesday, November 5, 2002 by passing Resolution No. 9803. On July 2 an ordinance was introduced, with final adoption scheduled for July 9, ordering that the Fire Safety Bond be submitted to the voters at that election. The proposed ballot language was included in that ordinance. If the ordinance is adopted by two-thirds vote of the members of the Council, it will go into effect immediately, and assuming its passage.

There are two remaining issues that require Council direction. First, Council needs to determine the process for submission of an argument in favor of the measure, and second Council needs to consider a resolution requesting the services of the Registrar of Voters of Alameda County to conduct the election and directing the City Attorney to submit an impartial analysis to the City Clerk.

Determine if the City Council has an interest in authoring an argument in favor of the ballot measure for the Fire Safety Bond Measure. The Elections Code provides for arguments to be filed with the City Clerk as the Elections Official of no more than 300 words each for and against any ballot measure to be included in the Voters Sample Ballot. The arguments can be authored by a maximum of five eligible voters. The Code also requires that only one argument for and one argument against for each ballot measure to be accepted by the Elections Official and provides for an orderly process in determining who is eligible to submit a statement. If more than one argument for or more than one argument against the measure is received by the deadline, per the Elections Code, the City Clerk must select only one argument for and one argument against, giving preference and priority in the following order to:

- (a) *The legislative body, or member or members of the legislative body authorized by that body.*
- (b) *The individual voter, or bona fide association of citizens, or combination of voters and associations, who are the bona fide sponsors or proponents of the measure.*
- (c) *Bona fide associations of citizens.*
- (d) *Individual voters who are eligible to vote on the measure.*

The City Council has several options. It may: 1) author an argument in favor of the measure as a whole body; 2) authorize selected members of the Council to do so and then the full Council can sign the argument; 3) authorize up to two Councilmembers to author and sign and have three other eligible voters who are proponents sign; or 4) choose to opt to have others author the argument, in which case the second priority position for acceptance of the argument is sponsors or proponents of the measure.

If the City Council agrees to author an argument as a whole body, this could be accomplished in several ways in light of the Brown Act. The Council could 1) write the argument as a committee of five in an open session; 2) delegate two members to prepare the argument and present the draft to the whole Council in an open session, or 3) authorize up to two Councilmembers to write the argument and then the full Council would sign, in which case, it would not be necessary to return to the whole council at a regular Council meeting. The arguments must be submitted to the City Clerk by 5:00 p.m. on August 2, 2002 and any rebuttals must be submitted by 5:00 p.m. on August 12, 2002.

ENCLOSURE: None

RECOMMENDATIONS: If the Council adopts the Ordinance on second reading July 9, staff recommends that Council:

1. Determine if Council, in whole or part, will author a measure argument.
2. Adopt a resolution requesting the Alameda County Registrar of Voters conduct the Special Election on behalf of the City of Fremont and directing the City Attorney to prepare the Impartial Analysis for the measure.

7.7 BALLOT LANGUAGE HILL AREA INITIATIVE

Consider Ballot Language for Hill Area Initiative of 2002 for General Election, Tuesday November 5, 2002

Contact Person:

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BACKGROUND: Staff is requesting City Council consideration of a resolution to:

Approve Ballot Measure Language. The California Elections Code calls for a maximum 75-word statement for each ballot measure question. The language of each ballot measure should be a concise summary of the general meaning and effect of a YES or NO vote. Staff has prepared several draft versions for Council consideration:

Initial proposal from June 2, 2002 meeting:

Shall the voters of the City of Fremont adopt the Hill Area Initiative of 2002?

YES NO

Alternatives with word counts:

56 words

Shall the voters of the City of Fremont adopt the Hill Area Initiative of 2002 that changes the allowed land uses and reduces the amount of residential development in the Hill Area within the existing boundaries of the City of Fremont and in hill areas adjacent to the City if such land is annexed to Fremont?

YES NO

71 words

Shall the voters of the City of Fremont adopt the Hill Area Initiative of 2002 that modifies Fremont's existing hill area land use regulations by changing allowed uses and reducing the amount of residential development in the hill areas within the City to one unit per 20 acres and to one unit per 100 acres in lands that may be annexed in hill areas adjacent to the City in the future?

YES NO

75 Words

Shall the voters of the City of Fremont adopt the Hill Area Initiative of 2002 that reduces residential development in the hill area in Fremont to one unit per 20 acres and one unit per 100 acres in the hill area adjacent to Fremont if such land is annexed and that changes the allowed uses in Fremont's hill area by excluding medium and large commercial vineyards, Christmas tree farms, and green houses on 15% slopes?

YES

NO

Discussion: Council may choose one of the suggested questions above or offer other suggested language. Another option would be for Council to direct that the full text of the ordinance be printed in the ballot. The estimated costs for printing, translating and mailing would be \$15,000 to \$20,000. In lieu of full text printing, the Sample Ballot would indicate that the Clerk will mail a copy of the ordinance to anyone who requests it.

There are copies of former Fremont election ballots in the Council packet to show formats of different ballot questions.

ENCLOSURE:

- Sample ballots from previous elections.

RECOMMENDATION: Council review options and give direction.

8.1 Council Referrals

- A. Referral from Vice Mayor Zlatnik:** Request that the Council refer to staff a request to consider giving the annual 4th of July Parade a centrally located route. The parade is attracting larger crowds and more participants every year and the streets in historic areas are narrow and congested. A central location would be safer, more convenient, and much less expensive for cost of City services. Staff consideration should also include communicating with local organizations for their input.

8.2 Legislation

- A. Discussion of City Position on Proposed Legislation Described in the League of California Cities Priority Focus Bulletin No. 26-2002. Council may direct staff to act on positions taken by Council.

Enclosure: League of California Cities Priority Focus Bulletin (Copies Available in the City Clerk's Office)

8.3 Oral Reports on Meetings and Events

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ACRONYMS

ABAG.....	Association of Bay Area Governments	FEMA.....	Federal Emergency Management Agency
ACCMA.....	Alameda County Congestion Management Agency	FMC.....	Fremont Municipal Code
ACE.....	Altamont Commuter Express	FPD.....	Fremont Police Department
ACTA.....	Alameda County Transportation Authority	FRC.....	Family Resource Center
ACTIA.....	Alameda County Transportation Improvement Authority	FUSD.....	Fremont Unified School District
ACWD.....	Alameda County Water District	GIS.....	Geographic Information System
ARPAC.....	Ardenwood Regional Preserve Advisory Committee	HARB.....	Historical Architectural Review Board
BCDC.....	Bay Conservation & Development Commission	HBA.....	Home Builders Association
CALPERS.....	California Public Employees' Retirement System	HRC.....	Human Relations Commission
CBD.....	Central Business District	ICAP.....	Integrated Capital Assets Plan
C-C.....	Community Commercial	ICMA.....	International City/County Management Association
CC & R's.....	Covenants, Conditions & Restrictions	JPA.....	Joint Powers Authority
CDBG.....	Community Development Block Grant	LLMD.....	Lighting and Landscaping Maintenance District
CEQA.....	California Environmental Quality Act	LOCC.....	League of California Cities
CERT.....	Community Emergency Response Team	LOS.....	Level of Service
CIP.....	Capital Improvement Program	MOU.....	Memorandum of Understanding
CMA.....	Congestion Management Agency	NLC.....	National League of Cities
CNG.....	Compressed Natural Gas	NPO.....	Neighborhood Preservation Ordinance
COF.....	City of Fremont	PC.....	Planning Commission
COPPS.....	Community Oriented Policing and	PUC.....	Public Utilities Commission
CSAC.....	California State Association of Counties	PWC.....	Public Works Contract
CTC.....	California Transportation Commission	RDA.....	Redevelopment Agency
DEIR.....	Draft Environmental Impact Report	RFP.....	Request for Proposals
DES.....	Development & Environmental Services	RFQ.....	Request for Qualifications
DO.....	Development Organization	ROP.....	Regional Occupational Program
EBRPD.....	East Bay Regional Park District	RRIDRO.....	Residential Rent Increase Dispute Resolution Ordinance
EDAB.....	Economic Development Alliance for Business (County)	RWQCB.....	Regional Water Quality Control Board
EDAC.....	Economic Development Advisory Commission (City)	SACNET.....	Southern Alameda County Narcotics Enforcement Task Force
EIR.....	Environmental Impact Report	STIP.....	State Transportation Improvement Program
EIS.....	Environmental Impact Statement	TCRDF.....	Tri-Cities Recycling and Disposal Facility
ERAF.....	Education Revenue Augmentation Fund	TS/MRF.....	Transfer Station/Materials Recovery Facility
FAR.....	Floor Area Ratio	USD.....	Union Sanitary District
		VTa.....	Santa Clara Valley Transportation Authority
		WMA.....	Waste Management Authority
		ZTA.....	Zoning Text Amendment



UPCOMING MEETING AND CHANNEL 27 BROADCAST SCHEDULE				
<i>Date</i>	<i>Time</i>	<i>Meeting Type</i>	<i>Location</i>	<i>Cable Channel 27</i>
July 16	4:00 p.m.	Study Session - CANCELED		
July 23	7:00 p.m.	Regular City Council Meeting	Council Chambers	Live
August		Council Recess		
September 3	7:00 p.m.	Regular City Council Meeting	New Council Chambers	Live
September 10	7:00 p.m.	Regular City Council Meeting	New Council Chambers	Live
September 17	5:00 p.m.	Study Session	New Council Chambers	Live
September 24	7:00 p.m.	Regular City Council Meeting	New Council Chambers	Live